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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

JOSHUA C. AGSALUD, Director of Labor and Industrial Relations of the State of Hawaii; and ORLANDO K. WATANABE, Administrator of the Disability Compensation Division of the Department of Labor and Industrial Relations of the State of Hawaii,
Appellants,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation,
Appellee.

On Appeal from the United States Court of Appeals For the Ninth Circuit

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

The Hawaii Prepaid Health Care Act, Hawaii Revised Statutes Chapter 393, requires employers in Hawaii to contract on behalf of employees for coverage of hospital and medical costs, and to pay a portion of the premium for that coverage. The Court of Appeals for the Ninth Circuit held that Hawaii is forbidden by the preemption provision of the Employee Retirement Income Security Act of 1974 ("ERISA"), § 514(a), 29 U.S.C. § 1144(a), from legislating in this manner to protect the health, and therefore the earning capacity, of its working population. The questions presented in this appeal are:

1. Whether the benefit plans required by the Hawaii Prepaid Health Care Act are "disability insurance" plans within the meaning of § 4(b)(3) of ERISA, so that the Hawaii Act is within the scope of activity Congress expressly left to the states?

2. Whether the Hawaii Prepaid Health Care Act is state legislation of the kind Congress intended to preempt under § 514(a) of ERISA?

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Appellants,

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STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation,
Appellee.

On Appeal from the United States Court of Appeals For the Ninth Circuit

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 633 F.2d 760 (1980) and is printed in Appendix A. The opinion of the United States District Court for the Northern District of California is reported at 442 F.Supp. 695 (1977), and is printed in Appendix B.

JURISDICTION

Plaintiff in this case sought and was granted a final order declaring that the Hawaii Prepaid Health Care Act ("the Act") violates the Employee Retirement Income

Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, and enjoining defendants from enforcing the Act. Jurisdiction was alleged in the district court on the basis of, *inter alia*, 28 U.S.C. § 1331. Because the court of appeals held a state statute invalid as repugnant to the Constitution and laws of the United States, an appeal to this Court lies under 28 U.S.C. § 1254(2).

The opinion of the United States Court of Appeals for the Ninth Circuit was issued on October 15, 1980. Rehearing was denied on December 16, 1980. (Appendix D.) Notice of appeal was filed in the Court of Appeals on February 2, 1980. (Appendix E.) On February 20, 1981, an extension was granted until May 1, 1981 for the docketing of the appeal. (Appendix F.)

STATUTES INVOLVED

The state statute declared invalid in its entirety in this case is Hawaii Revised Statutes ("H.R.S.") Chapter 393, the Hawaii Prepaid Health Care Act. The principal substantive sections of that Act are reprinted in Appendix G.

Also involved in this case are §§ 3(1), 4(b)(3), and 514(a) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1002(1), 1003(b)(3), and 1144(a). These provisions are also reprinted in Appendix G.

STATEMENT OF THE CASE

Like every other state, Hawaii has a workers' compensation program which requires employers to insure employees against economic losses due to work-related illnesses or injuries by providing medical and hospital benefits as well as wage replacement payments. H.R.S. Chapter 386. In

1969, Hawaii became the fifth state in the nation to provide employees with protection as well against "loss from disabling nonoccupational sickness or accident." H.R.S. § 392-1 (Temporary Disability Insurance Act, Findings and Purposes). The Temporary Disability Insurance Act passed in that year provided that employers covered by its provisions must assure their employees wage replacement benefits at specified levels in the event of an inability to work for medical reasons.

After several years of further study, however, the Hawaii Legislature determined that the protection against the economic effects of nonoccupational disabilities provided by the 1969 statute was incomplete. For, it was found, "[t]he cost of medical care in case of sudden need may consume all or an excessive part of a person's resources." H.R.S. § 393-2 (Prepaid Health Care Act, Findings and Purposes). And, while "[p]repaid health care plans . . . offer[ed] a certain measure of protection against such emergencies . . . [for] a large segment of the labor force . . . [some] workers . . . [did] not possess any or possess[ed] only inadequate prepayment coverage." *Id.* To assure that the economic security promised by the 1969 Act did not prove illusory, Hawaii in 1974 became the first state in the country to expand the protection afforded workers from economic loss due to nonoccupational illness or injury to include the costs of comprehensive health care. The question in this case is whether Congress, in passing, also in 1974, the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*, prohibited Hawaii from protecting in this manner the economic security of its working population.

A. The Statutory Scheme

Hawaii's program, which has been lauded as a possible model for a national health benefit program,[1] operates fairly simply. Employees covered by the Prepaid Health Care Act ("the Act") are assured that after four weeks of employment their employer will contract on their behalf for coverage of their own, but not their dependents', medical, surgical and hospital costs.

The basic parameters of the coverage required are defined by the Act (H.R.S. § 393-7(c)) to include inpatient hospital care, medical and surgical services by doctors, laboratory and radiology services, maternity benefits, and specified benefits for the treatment of alcoholism and drug addiction. The precise coverage required within these broad categories is, however, not specifically stated in the Act but, instead, is defined as benefits "equal to, or medically reasonably substitutable for, the benefits provided by [one of the two] prepaid health care plans . . . which have the largest number of subscribers in the State," as administratively determined. H.R.S. § 393-7(a).

Under Hawaii's law, an employer can choose either a prepaid health care plan which directly provides the required medical and hospital care or one which only insures payment of the costs of such care, leaving the choice of doctors and hospitals to the covered employee. H.R.S.

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[1]Martin E. Segal Co., Evaluation of the Impact of Hawaii's Mandatory Health Insurance Law: A Report on the Hawaii Prepaid Health Care Act (U.S. Department of Health, Education & Welfare, October, 1978).

§ 393-12. In either case, the employer is ordinarily required to pay at least one half the necessary premium. Some small employers, however, are entitled to a state-funded contribution toward their premium contribution. H.R.S. § 393-45. The remaining portion of the premium, up to 1.5 per cent of an employee's wages, is paid by the employee. H.R.S. § 393-13. Employees are assured that the benefits promised will indeed be paid because, in the event of bankruptcy of the employer or failure to provide the required coverage, state funds are available to pay the benefits. H.R.S. § 393-48.

The Prepaid Health Care Act, like both the temporary disability insurance law and the workers' compensation program, is administered by the Disability Compensation Division of the Hawaii Department of Labor and Industrial Relations. Administration of the three laws is closely coordinated, using overlapping files, staff, and forms.

B. Proceedings Below

Appellee Standard Oil Company of California ("the Company") employs several hundred workers in Hawaii. While the Company does provide medical coverage to employees, it does not provide any benefits to cover the cost of treatment for drug or alcohol abuse, as required by a 1976 amendment to the Act. H.R.S. § 393-7. Rather than meeting the Act's requirements, the Company in 1976 filed an action in the United States District Court for the Northern District of California seeking a declaration that the Prepaid Health Care Act is invalid under § 514(a) of ERISA, 29 U.S.C. § 1144(a), and an injunction relieving the Company of the obligation to provide its Hawaiian employees with health care coverage complying with the

Act. On cross-motions for summary judgment, the district court issued the relief requested. And, on appeal, the United States Court of Appeals for the Ninth Circuit affirmed. Because a state statute has been declared invalid under federal law, an appeal lies to this Court under 28 U.S.C. § 1254(2).

ARGUMENT

Introduction

The court of appeals' conclusion that Congress has outlawed Hawaii's approach to protecting the earning power of its employed residents rests upon § 514(a) of ERISA, 29 U.S.C. § 1144(a), which reads:

> "Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and *not exempt under sections 1003(b) of this title.*" (Emphasis supplied).

The affirmative reach of the language of § 514(a) is presently at issue before this Court in two cases in which oral argument has been held,[2] and in at least two others pending on petitions for writs of certiorari.[3] The current

[2] *Alessi v. Raybestos-Manhattan,* No. 80-1943; *Buczynski v. General Motors Corp.,* No. 80-193. In these two cases, the ERISA preemption issue may not be reached because there is an alternative ground upon which the decision below could be reversed.

[3] *Stone v. Stone,* 632 F.2d 740 (9th Cir. 1980), petition for certiorari filed February 19, 1981 *sub nom. Seafarers International Union Pacific Dist.-Pacific Maritime Ass'n. Pension Plan v. Stone,* No. 80-1403; *Carpenters Pension Trust v. Kronschnabel,* 632 F.2d 745 (9th Cir. 1980), petition for certiorari filed February 20, 1981, No. 80-1454.

disarray as to the principles governing ERISA preemption generally alone justifies plenary consideration of this case, as we show in Part II, *infra*.

There is, however, a much simpler reason this case merits full review in this Court: The prepaid health care plans required by the Act *are* "exempt under section [4(b)], 29 U.S.C. § 1003(b)." For, § 4(b)(3) exempts any plans "maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment or disability insurance laws." A glance at the definition of "disability insurance" in the insurance codes of many states, including that of Hawaii, confirms that comprehensive medical insurance *is* properly referred to as a particular form of "disability insurance". See Appendix H, collecting such statutes. Thus, contrary to the view of the courts below, the plans required by the Act *are* within the usual meaning of § 4(b)(3). And, ERISA's history and goals similarly offer no reason for a limited interpretation of the "disability insurance" exception in § 4(b)(3).

Hawaii's carefully considered, although unique, state-mandated medical benefits program is well within traditional state powers. It in no way conflicts with any substantive provision in ERISA, since that statute requires no benefits at all. In light of the strong argument in favor of the Act's validity summarized above and developed in Part I, *infra*, Hawaii should not be precluded from pursuing in its own fashion the well being of its citizens unless and until this Court decides otherwise upon plenary

review. *Compare, e.g., Malone v. White Motor Company,* 435 U.S. 497; *Ohio Bureau of Employment Services v. Hodory,* 431 U.S. 471; *Babbitt v. United Farm Workers,* ..... U.S. ....., 99 S.Ct. 2301.

I

Comprehensive Medical Care Such As That Required By Hawaii's Prepaid Health Care Act Is "Disability Insurance" Within the Meaning of § 4(b)(3) of ERISA.

There is no basis in the history, structure, or purposes of ERISA for the conclusion that Congress intended "a moratorium of indefinite length on the passage of health insurance laws." (A-47.) *See* (1.), *infra.* The courts below so recognized, and did not base their holding upon any of these considerations. Rather, their holding that Hawaii's Act is not a "disability insurance law" turned on the belief that the term "disability insurance" is unambiguous, so that the plain meaning rule requires the admittedly troublesome result reached. But, broadening the compass of investigation of the meaning of the term "disability insurance" beyond mandatory to regulatory statutes quickly demonstrates that this view is in error. *See* (2.), *infra.* The premises of the judgment below therefore fall.

1. *All* the types of compulsory state insurance legislation in effect at the time of the passage of ERISA are included in § 4(b)(3). No mandatory comprehensive health insurance laws covering non-disabled workers existed when ERISA was developed. It is therefore not surprising that, as the district court acknowledged, "the legislative history discloses no explicit congressional decision that

[mandatory] state health insurance laws should be preempted." (A-32.)[4] Indeed, the legislative history, insofar as it is informative at all in this regard, supports a construction of § 4(b)(3) which includes mandatory comprehensive health coverage.[5] Further, since ERISA itself neither requires that *any* type of employee benefit plan be provided nor substantively regulates health care plans if they are voluntarily provided,[6] there is no possibility that § 4(b)(3) must be read in a limited fashion to avoid depriving employees of substantive protections accorded by ERISA.[7]

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[4]The court of appeals in this case relied heavily upon the district court's analysis of the meaning of "disability insurance" within § 4(b)(3). (A-4.) It is for this reason we allude to the district court opinion with some frequency.

[5]Several bases for this conclusion are discussed in the district court opinion. (A-20, A-23, A-30, A-33.)

In addition, there is the fact that while the language of §4(b)(3) was derived from § 4(b)(2) of the Welfare and Pension Plans Disclosure Act, two changes were made in this language during the course of deliberations on H.R. 2, 93d Cong., 1st Sess. (1973), the bill that eventually became ERISA. (A-19.) Both of these changes were in the direction of greater, rather than less flexibility of state action. In particular, "unemployment compensation disability insurance" was altered to "unemployment compensation *or* disability insurance." (Emphasis supplied.) This change removed any suggestion that only those types of disability insurance which pertained to persons actually out of work, or were integrated with the state unemployment compensation scheme were included. Instead, the exemption was broadened to allow state innovations as to the precise form of "disability insurance" to require.

[6]All substantive regulation in ERISA concerns pension plans. *See* ERISA § 3(1)&(2), 29 U.S.C. § 1002(1)&(2); § 101, 29 U.S.C. § 1021 *et seq.*; § 201, 29 U.S.C. § 1051; § 301, 29 U.S.C. § 1081; § 401, 29 U.S.C. § 1101.

[7]The Company has at points in this litigation sought to justify an exceedingly narrow approach to § 4(b)(3) on the ground that the purely procedural fiduciary, reporting and disclosure protec-

Nor, as the district court also acknowledged, can "mere incantation of the congressional goal of uniformity in regulation . . . resolve this question of statutory construction." (A-34.) For,

> "Congress itself recognized the need to accommodate state interests in this area . . . [by permitting] the states to continue to enforce their workmen's compensation, unemployment compensation, and disability insurance laws although those laws vary substantially from state to state." *Id.*

That is, since Congress explicitly decided to delineate an area of disuniformity, one cannot answer the question whether Hawaii's Act is a disability insurance law for purposes of §4(b)(3) by observing that *except* for plans within §4(b)(3), national uniformity was a goal of the Act; the decision to accept a measure of variation is as much part of the congressional scheme as is the federal supersession otherwise applicable. *See Malone v. White Motor Company, supra,* 435 U.S. at 513; *New York Telephone Company v. New York State Dep't of Labor,* ..... U.S. ....., 99 S.Ct. 1328.

2. Despite this absence of any support in the history or purposes of the Act, the court of appeals concluded that the Act is not within the disability insurance category of §4(b)(3) because the statute compensates employees for their own medical expenses whether or not they are

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tions ERISA does provide to welfare plan participants will otherwise be lost to employees covered by the Act. The Act's state-funded guarantee of payment of promised benefits, however, obviates the need for the lesser protections accorded by ERISA. Also, since the same problem exists in any event with regard to *all* disability insurance plans within §4(b)(3), it cannot serve to separate Hawaii's variety from the more traditional ones.

"unable to perform their normal employment duties." (A.4.)[8] In so holding, the court attributed to Congress the odd intention of exempting state statutes that require employee medical and hospital coverage for conditions which have already caused an inability to work and a consequent loss of income, while forbidding statutes designed to achieve similar income security goals by assuring employee access to preventive medical care as well.

This construction might, of course, be required by the "plain meaning rule of statutory construction" if, as the courts below maintained, "analysis of the term 'disability insurance laws' demonstrates that neither its plain nor its technical meaning comprehends health insurance laws." (A-24.)[9] In this conclusion, however, the courts below were profoundly in error. For, as a matter of ordinary language, the definition of "disability insurance" laws adopted by the court of appeals takes account of the word "disability" while ignoring the word "insurance." One

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[8]The court of appeals apparently failed, quite rightly in our view, to embrace the alternative explanation offered by the district court—that the Act is not a disability insurance law because of "the types of benefits" provided. (A-25.) For, the district court's own survey demonstrated that several of the mandatory disability insurance laws which preexisted ERISA *did* provide some form of health care benefits. (A-20-21, A-23.) That Hawaii provided for health care benefits in a statute separate from that requiring wage replacement benefits certainly cannot be dispositive of the validity of its scheme.

[9]Thus, we would agree that, had Hawaii passed a statute requiring employer-provided automobile insurance or prepaid legal services, the conclusion that such a statute is not a "disability insurance" law would be inescapable. The fact that Congress did not expressly determine to forbid state-required insurance of those types would be immaterial, for no stretching of the language of § 4(b)(3) could accommodate automobile or legal insurance.

would expect that one *could* insure against a disability as well by preventing it through assuring adequate health care as by reimbursing for losses once a disability has occurred.

More important—indeed conclusive—is the fact that, as a matter of "technical meaning" in the insurance field, the term "disability insurance" includes all forms of health insurance. Thus, Hawaii's own insurance code defines disability insurance as follows:

> Disability insurance, also referred to as accident and sickness insurance, is insurance against bodily injury, disablement, or death by accident, or accidental means, or the expense resulting from sickness; and every insurance appertaining thereto. H.R.S. § 431-7.

Substantially similar broad definitions are used for regulatory purposes in Alabama, Arizona, Arkansas, Idaho, Montana, Tennessee, Utah, Washington, and Wyoming. See Appendix H, page A-69, for the pertinent statutes. As the Appendix also shows, in most of these states, including Hawaii (H.R.S. § 431-513), there are statutes using the term "disability insurance" in a manner which affirms that, as the basic definition indicates, the term is indeed broad enough to encompass health care coverage in all its forms.

Several states even make explicit in their basic definition of disability insurance that health benefits are included: Alaska includes in the definition "expense incurred in prevention of sickness, or dental care" (*Alaska Stat.* § 21.12.050); Florida notes that "disability insurance" is "also known as 'health insurance'" (*Fla. Stat. Ann.* § 624.603 (West Supp. 1981); Michigan states that "disability insurance" includes "also the granting of specific

hospital benefits and medical, surgical and sick-care benefits to any person, family or group." *Mich. Comp. Laws Ann.* § 500.606 (West). Thus, the consideration that "ERISA was drafted by specialists in the field [so that] . . . 'it is incumbent on [the court] to give the word its technical meaning . . . if the word be deemed to have a peculiar connotation for those intimate with' the subject matter" (A-25) has the opposite import to that attributed to it below: The "specialists" must be assumed to have been aware that "disability insurance" as a legal term can and does encompass all forms of health plans.

At bottom, the source of the error below was that the courts, in determining the reach of the term "disability insurance," looked only to those statutes mandating benefits. Obviously, such an approach to the problem is circular: It is conceded that Hawaii is the first state to require comprehensive health insurance, so that a survey of existing *compulsory* disability insurance laws will only confirm that fact. One cannot answer the question whether "Congress intended to permit only traditional forms of state social insurance laws to continue to operate" (A-31) by looking only to such laws, and not to other statutes using the term, for a definition of "disability insurance."[10]

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[10]The district court suggested a rationale for restricting § 4(b)(3) to "traditional state social insurance laws"—that such plans are "usually maintained solely to comply with state social insurance laws [and not] . . . for other or additional reasons." (A-30-A-31.) This thesis, however, is simply incorrect. Only five states mandate *any* form of disability insurance, while private, non-mandatory employer-provided wage replacement disability insurance is widespread. *See, e.g., General Electric Company v. Gilbert*, 429 U.S.

The "plain words" of § 4(b)(3) cannot, then, supply what is lacking in ERISA's history and purposes: evidence "that the historic police power of the states were . . . superseded . . . [because] that was the clear and manifest purpose of Congress." *Rice v. Sante Fe Elevator Co.*, 331 U.S. 218, 230, quoted in *Jones v. Rath Packing Co.*, 430 U.S. 519, 525. Absent such evidence, the people of Hawaii are entitled to experiment with a novel form of compulsory disability insurance, providing preventive as well as remedial benefits. Because the court of appeals held otherwise, the case merits this Court's plenary attention.

II

The State and Federal Courts Need Guidance from this Court as to ERISA Preemption Principles Generally.

Presently pending before this Court are two cases in which the question of ERISA preemption of a state statute forbidding the offset of workers' compensation benefits against pension benefits may be reached. *Alessi, supra*; *Buczynski, supra.* In the briefs in those cases, the legislative history of § 514(a) of ERISA has been reviewed. *See Alessi, supra,* and *Buczynski, supra,* Brief for the United States as *Amicus Curiae*, 24-25; *Buczynski,* Brief for Respondent, 43-57; *Alessi,* Brief of Appellees, 37-39.

122; *see generally* United States Senate Committee on Labor and Human Resources, Legislative History of the Pregnancy Discrimination Act of 1978 (1980). Thus, the problem of applying the "maintained solely" language of § 4(b)(3) to interstate plans voluntarily provided in some states is one which arises with respect to disability insurance generally. *Delta Airlines v. Kramarsky,* 485 F. Supp. 300, 306 (S.D.N.Y. 1980). It cannot serve as a reason for limiting the reach of that term.

As that history shows, the broad language of § 514(a) as it was ultimately enacted was substituted in the Conference Committee for a more traditional preemption provision displacing state laws only in the areas actually regulated. H. Conf. Rep. No. 93-1280, 93rd Cong., 2d Sess., at 383. Because this was a last-minute change, Congress never had an opportunity to consider in detail the likely effect of outlawing state regulation over a field considerably broader than the area regulated. The result of this hasty decision, and the consequent failure to provide any detailed guidance upon Congress' intent to affect this or that variety of state law, has been a great deal of litigation concerning whether Congress intended to forbid a variety of state laws in areas of strong state interests. *See, e.g., Alessi, supra* and *Buczynski, supra* (state workers' compensation offset statute); *Carpenters Pension Trust Fund v. Campa,* 444 U.S. 1028, *Stone v. Stone, supra, Carpenters Fund v. Kronschnabel, supra, American Tel. & Tel. Co. v. Merry,* 592 F.2d 118 (2d Cir. 1979), and *Cody v. Riecker,* 594 F.2d 314 (2d Cir. 1979) (enforcement of state domestic relations judgments and of community property laws); *Pervel Industries, Inc. v. Connecticut Comm'n on Human Rights,* 603 F.2d 214 (2d Cir. 1979), *cert. denied* 444 U.S. 1031, and *Bucyrus-Erie Co. v. Department of Industry, Labor & Human Relations,* 599 F.2d 205 (7th Cir. 1979), *cert. denied* 444 U.S., 1031 (state fair employment practices laws); *Wadsworth v. Whaland,* 562 F.2d 70 (1st Cir. 1977), *cert. denied* 435 U.S. 980, *Hewlett-Packard Co. v. Barnes,* 571 F.2d 502, *cert. denied* 439 U.S. 831, *St. Paul Elec. Workers Welfare Fund v. Markman,* 490 F.Supp. 931 (D. Minn. 1980), and *Insurers Action Council, Inc. v. Heaton,* 423

F.Supp. 921 (D.Minn. 1976) (state regulation of medical insurance); *In the Matter of UAW Legal Services Plan*, C.C.H. Pension Plan Guide ¶ 22, 185 (N.Y. Sup. Ct., App. Div., April 6, 1979) (judicial approval of legal service plan). While the precise contentions in these cases vary, and while different statutory or implicit exceptions to ERISA preemption are alleged to apply in different cases, the basic problem in all the cases has been whether § 514(a) must be read at its broadest and any exceptions at their narrowest or whether, instead, there is room in this area for tempering the reach of § 514(a) where no specific intent to oust state regulation can be found.

A comparison of the result and reasoning in this case with, for example, those in the community property and alimony/child support cases shows that the answer to this overriding question has been inconsistent. In the marital property and support cases, it is undisputed that there are no express exemptions in ERISA conceivably applicable. Moreover, those cases involve the effect of state law upon *pension* benefits and plans which, unlike the health benefits involved in this case, *are* substantively regulated by ERISA. Indeed, one provision of ERISA, § 206(d)(1), 29 U.S.C. § 1056(d)(1), at least arguably conflicts with state laws requiring direct payment by pension plans to ex-spouses of participants.

Nonetheless, the courts, with the seeming sanction of this Court (*Campa, supra,* dismissing for want of substantial federal question the appeal in *In re Marriage of Campa*, 89 Cal.App.3d 113, 152 Cal.Rptr. 362 (1979)[11]), have found

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[11]As a summary disposition, *Campa* cannot be said directly to control the disposition of this case, which involves an entirely different type of state law than that considered by *Campa* and, in

an "implied exception" (*AT&T v. Merry, supra,* 592 F.2d at 124) to § 514(a) for state marital property and support laws and the enforcement thereof. *Kronschnabel, supra; Stone, supra*[12]; *AT&T v. Merry, supra; Cody v. Riecker, supra; Knapp v. Johnson,* 301 N.W.2d 548 (Minn.S.Ct. 1980); *In Re Hunt,* 77 Ill.App.3d 653, 397 N.E.2d 511, 519-21 (1979). The basis stated for this implied exception is that Congress did not evidence with sufficient clarity an intent to displace state domestic relations law, particularly since such displacement would be inconsistent with one of ERISA's purposes, protecting the families of employees. *See, e.g., Merry, supra,* 592 F.2d at 122, relying on the analysis in *Stone v. Stone,* 450 F.Supp. 919 (N.D.Cal. 1978). On this basis, the courts held that such laws do not "relate to" employee benefit plans within the meaning of § 514(a), even though a literal reading of that language would suggest otherwise.

In this case, in contrast, the court of appeals had no need to *imply* an exception to § 514(a); a sensitive reading of § 4(b)(3), an express exception, was all that was required. And the result in this case—ousting state-mandated and state-guaranteed medical protection for workers although ERISA provides no parallel protection—was

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addition, a section of ERISA, § 4(b)(3), not relevant in *Campa. Mandel v. Bradley,* 432 U.S. 173. Nevertheless, the result in *Campa* is in conflict with the court of appeals' conclusion here, for it necessarily rests on the premise that there is no inflexible presumption in ERISA in favor of preemption, and that even language apparently favoring preemption can be read narrowly where the result would otherwise be inconsistent with Congress' probable intention.

[12]The court of appeals' dispositions in *Stone* and *Kronschnabel* were based solely upon the controlling effect of *Campa.*

as cruel an irony in light of ERISA's general employee-protective goals as the anomaly avoided in the marital property and support cases. One would therefore have expected an approach to the express exception in terms of probable congressional intent at least equally sensitive to that used to create, in the marital property and support cases, an exception with no basis whatever in the statutory language. Instead, as we showed in Part I, *supra*, the court of appeals read § 4(b)(3) in a manner much narrower than the term "disability insurance" requires.

Most telling, perhaps, of the conceptual inconsistency in this area are the attempts by the district court and the court of appeals to distinguish this case from *Stone*.[13] The court of appeals (A-8—A-9) suggested two reasons for the differences in result: that this case deals with "the health insurance field," and that "domestic relations laws only tangentially affect employee benefit plans."

The first reason, of course, cuts in the wrong direction, since pension plans are much more closely regulated by ERISA than health insurance; and, while the second does give a reason for reading the "relate to" language in § 514(a) less than literally, it does not explain why the "disability insurance" exception was not entitled to an equally sensitive construction.

More candid, perhaps, was the chief distinction proffered by the district court—that "[r]egulation of benefit plans is an exercise of the police powers of states, but . . . is not nearly as well established as state regulation of community property." *Stone, supra*, 450 F.Supp. at 932. This

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[13]The same California district judge decided the two cases.

suggestion is profoundly disturbing. It amounts to a holding that Hawaii has less claim than California to its own solution to local problems simply because it has embarked upon a novel program rather than one steeped in tradition. As such, the distinction disregards a caution issued years ago by Justice Brandeis:

> "To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."

New State Ice Co. v. Liebman, 285 U.S. 262, 311 (dissenting opinion). Thus, the fact that Hawaii's program is innovative cannot possibly explain why the people of California are entitled to a less-than-literal interpretation of ERISA in order to protect their own institutions, while the people of Hawaii are denied protections accorded by their legislature and *consistent* with the literal language of ERISA.[14]

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[14]Another instance in which an exception to § 514(a) has been *implied* because of court disbelief that Congress intended to displace traditional state powers was *In the Matter of UAW Legal Services Plan, supra*. To our knowledge, no similar case has reached a higher court.

Expansive reading of explicit exceptions, based upon similar considerations, occurred both in some of the health plan cases (e.g., *Wadsworth v. Whaland, supra*) and some of the fair employment practices cases (e.g., *Bucyrus-Erie Co. v. Department of Industry, supra*)

This case provides the Court with an opportunity to develop an even-handed approach, consistent with the basic assumptions of the federal system, to ERISA preemption. For this reason, as well as for the reason discused in Part I, *supra*, it merits plenary review.

CONCLUSION

For the reasons stated above, probable jurisdiction should be noted in this case.

Respectfully submitted,

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Appendix A

In the United States Court of Appeals
For the Ninth Circuit

No. 78-1095
(DC No. C-76-2740 CBR)

Standard Oil Company of California,
Plaintiff-Appellee,

v.

Joshua C. Agsalud, et al.,
Defendants-Appellants.

[Filed Oct. 15, 1980]

OPINION

Appeal from the United States District Court for the Northern District of California
Charles B. Renfrew, District Judge, Presiding

Argued and submitted April 16, 1980

Before: ANDERSON, SCHROEDER and FARRIS, Circuit Judges

SCHROEDER, Circuit Judge:

The questions in this appeal concern whether Hawaii's comprehensive Prepaid Health Care Act, Haw.Rev.Stat. ch. 393, is preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1381 (ERISA). Appellants are officials of the State of Hawaii charged with the responsibility of enforcement of the Hawaii Act under state law. They challenge on statutory and constitutional

grounds the district court's decision that ERISA preempts the Hawaii Act. The district court's exhaustive opinion by Judge Renfrew is reported at 442 F.Supp. 695 (N.D. Cal. 1977). We are in basic agreement with that decision and affirm.

ERISA regulates the administration of private employee benefits and pension plans and establishes standards relating to the administration of those plans, particularly with respect to disclosure, reporting, vesting of benefits, funding and the conduct of plan managers. The Hawaii Prepaid Health Care Act requires employers in that state to provide their employees with a comprehensive prepaid health care plan. The Act was initially adopted in 1974, shortly after ERISA was enacted, and apparently no other state has adopted similar legislation.

The appellee, Standard Oil Company of California, a substantial employer in Hawaii, provides its employees with a self-funded health care plan, governed by ERISA, which does not comply in all respects with the Hawaii Act. When appellants attempted to enforce the Hawaii Act against it, Standard Oil filed this action seeking declaratory and injunctive relief.

Section 3 of ERISA, 29 U.S.C. § 1002, defines "employee welfare benefit plan" broadly as any plan or program maintained by an employer or employee organization to provide medical, surgical or hospital care or benefits. ERISA § 514 (a), 29 U.S.C. § 1144(a), provides that ERISA supersedes or preempts all state laws which "relate to any employee benefit plan."[1] The district court held that ERISA pre-

[1]ERISA § 3, 29 U.S.C. § 1002, defines "employee benefit plan" in pertinent part as an "employee welfare benefit plan."

empts the Hawaii law, that the Hawaii law does not fit into any exemptions from ERISA coverage, and that preemption is constitutional.

The appellants (Hawaii) argue that the benefit plans which the Hawaii Act is designed to require are not employee plans within the meaning of § 3 of ERISA. This Court has already held that ERISA preempts state regulation of medical, surgical and hospital benefits and has rejected the contention that regulation of such benefits is a "law . . . which regulates insurance" within the meaning of § 514(b)(2)(A) of ERISA, 29 U.S.C. § 1144(b)(2)(A). *Hewlett-Packard Co. v. Barnes,* 571 F.2d 502 (9th Cir.), *cert. denied,* 439 U.S. 831 (1978), *aff'g,* 425 F.Supp. 1294, 1300 (N.D. Cal. 1977). *See also St. Paul Electrical Workers Welfare Fund v. Markman,* No. Civ. 3-78-269, slip op. (D. Minn. May 21, 1980) (Minnesota's Comprehensive Health Insurance Act preempted by ERISA). Hawaii nevertheless argues that because its statute requires employers to provide benefits, the benefit plans are outside the scope of ERISA's coverage.

At the time ERISA was enacted, all private plans were voluntary as opposed to mandated by state law and ERISA itself does not require employers to provide plans. We cannot agree, however, with Hawaii's contention that Congress intended to exempt plans mandated by state statute from ERISA's coverage. Congress did distinguish between plans established or maintained by private employers for private employees and plans established or maintained by government entities for government employees. Such government plans are exempt. ERISA §§ 3(1), 3(32), 4(b)(1), 29 U.S.C. §§ 1002(1), 1002(32), 1003(b)(1).

See Feinstein v. Lewis, 477 F.Supp. 1256 (S.D.N.Y. 1979). Private plans are not. The plans which Hawaii would require of private employers are not government plans. There is no express exemption from ERISA coverage for plans which state law requires private employers to provide their employees. The legislative history convincingly demonstrates a broad congressional preemptive intent. See the discussion in the district court opinion in *Hewlett-Packard, supra,* at 1298-1300. *See also Wadsworth v. Whaland,* 562 F.2d 70 (1st Cir. 1977), *cert. denied,* 435 U.S. 980, 981 (1978); *Delta Air Lines, Inc. v. Kramarsky,* 485 F.Supp. 300 (S.D.N.Y. 1980). The plans envisioned under the Hawaii statute are therefore not rendered outside the definition of employee welfare benefit plans simply because Hawaii has attempted to make them mandatory.

Hawaii next argues that, even if plans which its Act would require are within the ERISA definition of employee benefit plans, they are nevertheless exempted under ERISA § 4(b)(3), 29 U.S.C. § 1003(b)(3), which provides that ERISA shall not apply to any plans "maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws." Specifically, appellants argue that the Hawaii Act is a "disability insurance law" within the meaning of this section.

Judge Renfrew's opinion below discusses this question at length, and we agree with his conclusion that the Hawaii Act is not a disability insurance law. Disability insurance compensates people who, because of disability, are unable to perform their normal employment duties. *See Standard Oil Co. v. Agsalud,* 442 F.Supp. 695, 698 (N.D. Cal. 1977).

Hawaii's law, on the other hand, is concerned with benefits regardless of any relationship to a disabling condition. Hawaii points out that examples of disability insurance laws were specifically referenced in the legislative history of the Welfare and Pension Plans Disclosure Act of 1958, the predecessor to ERISA. These examples included laws which provided not merely replacement of wages lost by virtue of a disability, but which also provided medical benefits for treatment of the disability. S.Rep.No. 1734, 84th Cong., 2d Sess. 16 (1956) (citing the Federal Railroad Unemployment Insurance Act, 45 U.S.C. §§ 351-67, general maritime law, and the disability insurance laws of New Jersey, Rhode Island, New York and California). It does not follow, however, that all insurance or benefit plans covering medical expenses, regardless of their relationship to a disability, are "disability insurance" within the meaning of ERISA.

Appellants next contend that even if the Hawaii Act is not a "disability insurance law" within the meaning of ERISA § 4(b)(3), 29 U.S.C. § 1003(b)(3), that section was intended to exempt from ERISA coverage all governmentally required insurance programs, and not merely those specifically enumerated. There is no support for that position in the language of the statute which references only unemployment, workmen's compensation and disability insurance laws. It is true that those were the only types of compulsory state insurance legislation in effect at the time of the passage of ERISA. Thus the broad preemption of all other compulsory plans prevents state experimentation with other types of programs. The question, however, is one

of policy for Congress and not of statutory interpretation for this Court.[2]

We must similarly reject Hawaii's claim that by referencing only certain types of social insurance the statute is arbitrary and violates the due process clause of the fifth amendment. Congress doubtless could have chosen to exempt all state social insurance and health insurance laws in order to encourage experimentation. Instead it chose to exempt only those types of programs with which the states had had some experience and with which employers were accustomed to dealing. We cannot say that its choice in this regard, however, was without rational basis, and that is the standard which we must employ. *Richardson v. Belcher,* 404 U.S. 78, 92 S.Ct. 254, 30 L.Ed.2d 2131 (1971); *Bolling v. Sharpe,* 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1953).

Hawaii also urges that there is an inconsistency, which it argues reaches constitutional dimension, in holding that the Hawaii Act is preempted by ERISA when another scheme, the Rhode Island Catastrophic Health Insurance Plan, R.I.Gen.Laws §§ 42-62-1 to 42-62-22, is not preempted. The appellee does not concede that the Rhode Island law is exempt, and in any event, accurately points out that the Rhode Island statute differs from the Hawaii statute in that the Rhode Island statute is not based on the employer-em-

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[2]Senators Javits and Williams have introduced a bill amending ERISA which would, among other things, specifically provide that the Hawaii Act is not preempted. S. 209, § 155, 96th Cong., 1st Sess. (1979), *reprinted* in 125 Cong. Rec. S. 564-65 (daily ed. Jan. 24, 1979). *See also* 125 Cong. Rec. S. 575 (1979) (remarks of Sen. Javits, explaining the preemption section of the bill).

ployee relationship common to ERISA and the Hawaii Act. The Rhode Island statute envisions a state administered fund rather than funds established or maintained by employers. The Hawaii Plan and the Rhode Island Plan are distinguishable insofar as they may be affected by ERISA.

Hawaii's argument concerning the tenth amendment, and its position that states and not Congress are empowered to regulate private health insurance plans, are adequately dealt with by this Court's decision in *Hewlett-Packard, supra,* which rejected similar arguments. As a corollary to the tenth amendment argument in this case, however, Hawaii suggests that its Act is an exercise of the state's taxing power because it requires employers to pay half the health insurance premiums of their employees. We agree with the district court's opinion below that the taxing power is the power to require money to be "paid to the State as a State," and that power is not invoked here. *Illinois Central R. Co. v. Decatur,* 147 U.S. 190, 13 S.Ct. 293, 37 L.Ed. 132 (1893). *See also National Carriers' Conf. Comm. v. Heffernan,* 454 F.Supp. 914 (D. Conn. 1978).

Finally, Hawaii argues that the preemption language of § 514(a) of ERISA, 29 U.S.C. § 1144(a), is not broad enough to encompass the Hawaii Act. That section of ERISA provides generally that the Act shall supersede "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" not otherwise exempted in the Act. Appellants in the district court argued that since ERISA was concerned primarily with the administration of benefit plans, its provisions were not intended to prevent the operation of laws like the Hawaii Act pertaining principally to benefits rather than administra-

tion. There is, however, nothing in the statute to support such a distinction between the state laws relating to benefits as opposed to administration. As the district court pointed out, the language of the statute provides that ERISA shall supersede "any and all State laws" and that does not mean "some but not all State laws." 442 F.Supp. at 707.

Hawaii now seeks support from Judge Renfrew's later decision in *Stone v. Stone,* 450 F.Supp 919 (N.D.Cal 1978), *aff'd* No. 78-2313 (9th Cir. Sept. 29, 1980), holding that application of California's community property laws to division of a pension was not preempted by ERISA. *Accord: United Ass'n of Journeymen v. Myers,* No. 77-436-B, slip op. (M.D.La. March 31, 1980); *Carpenters Pension Trust v. Kronschnabel,* 460 F.Supp. 978 (C.D.Cal. 1978), *aff'd* No. 78-2313 (9th Cir. Sept. 29, 1980).[3] Judge Renfrew's opinion in *Stone* distinguished that case from this one, noting first that this Court in *Hewlett-Packard, supra,* took a broad view of the preemption of federal law

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[3]The contrary view, i.e., that ERISA does preempt state community property law, had been taken by another district court in the Circuit in *Francis v. United Technologies Corp.,* 458 F.Supp. 84 (N.D. Cal. 1978). *See also* Note, ERISA Preemption of Community Property Law, 55 Wash.L.Rev. 443 (1980); Note, Preemption of California Community Property Law by ERISA: Congressional Intent and Judicial Interpretation, 10 Pac.L.J. 881 (1979); Reppy, Community and Separate Interests in Pensions and Social Security Benefits After *Marriage of Brown* and ERISA, 25 U.C.L.A. L.Rev. 417 (1978); Comment, The Employee Retirement Income Security Act of 1974—The Spouse's Interest or Non-Interest in a Community Property Asset, 12 Cal.West.L.Rev. 560 (1976). A similar split in authority has developed with respect to application of state garnishment laws to benefit plans. *See generally General Motors Corp. v. Buha,* No. 78-1175, slip op. (6th Cir. June 16, 1980) (listing cases).

over state law in the health insurance field, and noting further that domestic relations laws only tangentially affect employee benefit plans.

The Hawaii Act before us differs from community property laws. The Act directly and expressly regulates employers and the type of benefits they provide employees. It must "relate to" employee benefit plans within the meaning of ERISA's broad preemption provision, ERISA § 514(a), 29 U.S.C. § 1114(a).

Affirmed.

Appendix B

United States District Court
Northern District of California

No. C-76-2740-CBR

Standard Oil Company of California, a Delaware corporation,

Plaintiff,

vs.

Joshua C. Agsalud, Director of Labor and Industrial Relations of the State of Hawaii, and Orlando K. Watanabe, Administrator of the Disability Compensation Division of the Department of Labor and Industrial Relations of the State of Hawaii,

Defendants.

MEMORANDUM OF OPINION

This case presents two important issues, whether the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1381, preempts Hawaii's health insurance laws and, if it does, whether it is unconstitutional.

I

ERISA regulates the administration of private employee benefit and pension plans affecting interstate commerce. Pursuant to its authority under the Commerce Clause, U.S. Const. art. I, § 8, Congress established stan-

dards concerning disclosure to plan participants, reporting to the federal government, vesting of benefits, funding of plans, and conduct of the managers of plans. In addition, Congress created tax incentives to encourage the adoption of private plans and a federal insurance system to guarantee that beneficiaries would receive their benefits. As part of this scheme, Congress preempted "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan * * *." Section 514(a), 29 U.S.C. § 1144(a). Congress, however, exempted from ERISA's regulatory provisions benefit plans maintained to comply with "workmen's compensation laws or unemployment compensation or disability insurance laws." Section 4(b)(3), 29 U.S.C. § 1003(b)(3).

Also in 1974, the Hawaii legislature enacted the Hawaii Prepaid Health Care Act ("Hawaii Act") which required workers in the State to be covered by a comprehensive prepaid health care plan. Haw.Rev.Stat. §§ 393-1 - 393-51. The Hawaii Act was amended in 1976 to require that the plans cover diagnosis and treatment of alcohol and drug abuse. 1976 Haw.Sess. Laws c. 25, 28 (amending Haw.Rev. Stat. 393-7(c)). Administrative regulations adopted pursuant to the Hawaii Act include certain reporting requirements which differ from those of ERISA. Sections 14, 16, 60-64 of Reg. XLII. Employers who fail to comply with the requirements of the Hawaii Act may be enjoined from carrying on their businesses in any place in the State, and are liable to fines and other remedies. Act 90 of June 8, 1977 (amending § 393-33).

Plaintiff Standard Oil Company of California ("Standard") is a Delaware corporation conducting business in

interstate commerce with employees in Hawaii and many other states. Some Standard employees, annuitants, and their dependents, including some in Hawaii, have elected to participate in Standard's self-funded health care plan which reimburses 80 per cent or more of covered medical expenses incurred by the participants. Standard's medical plan does not provide certain benefits required by the Hawaii Act, including coverage of alcohol and drug abuse. Standard has failed to comply with certain reporting requirements of the Hawaii Act. The administrative offices of this plan are in the Northern District of California.

When defendants sought to enforce the Hawaii Act against it, Standard filed this suit on December 7, 1976, seeking declaratory and injunctive relief to prevent such enforcement. The Court has jurisdiction under § 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1). Venue is proper under § 502(e)(2), 29 U.S.C. § 1132(e)(2). The parties entered into a stipulation filed on December 22, 1976, in which defendants agreed not to seek Standard's compliance with the requirements of the Hawaii Act during the pendency of this litigation. Also pursuant to this stipulation, Standard withdrew its motion for a preliminary injunction. On March 3, 1977, the Court orally denied defendants' motion to dismiss and continued their motion to transfer this action to the District of Hawaii. On June 16, 1977, Standard filed a motion for summary judgment, and on June 20, 1977, defendants filed a cross-motion for summary judgment. Defendants also filed a supplemental memorandum in support of their alternative motion to transfer the case to the District of Hawaii because they are exposed to other lawsuits by other corporations seeking analogous relief.

The issues in this case have been, it is fair to say, extensively briefed. The Court also heard oral argument on July 21, 1977. There is no disputed issue of material fact, for the only dispute concerns the preemptive effect of ERISA on the Hawaii Act. The Court concludes that the Hawaii Act is preempted by ERISA and that the preemptive provision of ERISA is constitutional.

II

Standard's medical plan is an employee welfare benefit plan and an employee benefit plan within the meaning of §§ 3(1) and 3(3) of ERISA, 29 U.S.C. §§ 1002(1) and 1002(3).

Section 3(1) provides in relevant part:

> "The terms 'employee welfare benefit plan' and 'welfare plan' mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment * * * ."

Section 3(3) provides:

> "The term 'employee benefit plan' or 'plan' means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan."

Standard's plan is maintained for the purpose of providing, through the purchase of insurance, medical, surgical, or hospital benefits, and it is therefore an employee benefit plan within the meaning of § 3.[1] *See Wayne Chemical, Inc. v. Columbus Agency Service Corp.*, 426 F.Supp. 316, 320 (N.D.Ind. 1977).

Defendants contend that § 3 applies only to plans adopted voluntarily by the employer without the compulsion of state law. This interpretation requires the Court to read limiting language into § 3 which Congress could easily have placed there itself. Furthermore, if plans required by state law are not employee benefit plans within the meaning of § 3, the exemption in § 4 for plans maintained in order to comply with certain state laws would be completely unnecessary. Congress intended to preserve an area in which states could regulate employee benefit plans, but it implemented its intention in § 4, not in § 3.

III

The more difficult question is whether the Hawaii Act is a "disability insurance law" within the meaning of § 4(b)(3), 29 U.S.C. § 1003(b)(3). Section 4(b)(3) exempts from subchapter I of ERISA, which contains the reporting, disclosure, vesting, funding, and fiduciary provisions, any employee benefit plan which "is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws."

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[1]For the sake of brevity and convenience, the shorter term "employee benefit plan" or "plan" will be used to refer to plans like Standard's.

It is helpful first to identify what the preemption issue is and what it is not. The Court is not required in this case to infer preemption from the structure of a federal act without a preemption clause. *Cf. DeCanas v. Bica*, 424 U.S. 351, 358 (1976). Nor is this a case involving the feasibility of dual regulation of employee benefit plans by both state and federal governments. Standard's medical plan is covered either by federal law or by state law but not by both. A case like *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 237 (1947), which involves federal regulation of some aspects of a particular field and consistent state regulation of other aspects, is distinguishable because Congress has by unambiguous language eliminated that option of interpretation. See Part IV, *infra*. Nor need the Court determine whether state health insurance laws in general or the Hawaii Act in particular "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in ERISA, *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941), and is therefore implicitly preempted even though the preemption clause drafted by Congress did not cover it. *Cf. Jones v. Rath Packing Co.*, ... U.S. ....., 45 U.S.L.W. 4323 (March 29, 1977).

In ERISA, Congress has said that all state laws relating to private employee benefit plans are preempted except workmen's compensation, unemployment compensation, and disability insurance laws. The parties agree that a health insurance law is not a workmen's or unemployment compensation law within the meaning of § 4(b)(3), that workmen's compensation laws only replace lost income and defray medical expenses associated with work-related illness and injury, and that unemployment compensation laws re-

place income lost by involuntary loss of employment for nonmedical reasons. They also agree that disability insurance laws replace wages lost because of nonoccupational illness and injury. Their dispute centers on whether disability insurance laws, as understood by Congress in § 4 (b)(3), provide a second type of benefit related to nonoccupational illness and injury in addition to wage replacement—payment of medical expenses.

Although health and disability insurance laws can also be distinguished by the types of benefits they provide, see pp. 7-14, *infra*, a more fundamental difference involves the type of contingency against which they insure. As used in all disability insurance laws cited by defendants and of which the Court is aware, disability is a specialized term referring to a mental or physical condition which prevents an individual from pursuing his regular occupation. *See, e.g.*, 42 U.S.C. § 423(d) (Social Security Act); 45 U.S.C. § 351(k) (Railroad Unemployment Insurance Act); Haw. Rev.Stat. § 392-3(5) (Hawaii Temporary Disability Insurance Law); Cal.Unemp.Ins. Code § 2626 (West); N.Y. Work.Comp.Law § 201(9) (McKinney); N.J.Stat.Ann. § 43: 21-29 (West)(Temporary Disability Benefits Law); R.I. Gen.Laws § 28-39-2(14) (R.I.Temporary Disability Insurance Act); P.R.Laws Ann. Tit. 11 § 202(g) (Disability Benefits Act); *see also* G. Osborn, Compulsory Temporary Disability Insurance in the United States 3-4 (1953). A disability insurance law requires insurance against disability, against *disabling* nonoccupational illness and injury. In contrast, a health insurance law like the Hawaii Act requires insurance against *all* nonoccupational illness and injury, whether disabling or not. Nondisabling illnesses and

injuries constitute at least a substantial portion of the complaints treated through prepaid health care plans. One of the major arguments in favor of such plans is that they facilitate the practice of preventive medicine so that illnesses and injuries are dealt with before or in their incipiency while they are not disabling. Because the Hawaii Act requires insurance against conditions which are not disabilities in any accepted sense of the term, it cannot be considered a disability insurance law within the meaning of § 4(b)(3).

A second and more technical reason why the Hawaii Act is not a disability insurance law is that the benefits available under disability insurance laws are limited basically to replacement of wages whereas the benefits required by the Hawaii Act in employee benefit plans cover medical and hospital expenses.

The disability insurance law with which Congress is perhaps most familiar is the Old-Age, Survivors, and Disability Insurance provisions of the Social Security Act, 42 U.S.C. §§ 401 *et seq.* Section 423(a)(2) of Title 42 provides for the payment of a "disability insurance benefit" to a covered individual "in an amount equal to his primary insurance amount • • • determined under section 415 of this title." "In computing the primary insurance benefits payable under the [Social Security] Act, the wage earner's 'average monthly wage' as defined in 42 U.S.C. § 415(b) is the crucial factor." *Lerner v. Richardson*, 393 F.Supp. 1387, 1388 (E.D.Pa. 1975). Thus, at least in this disability insurance law, disability benefits are limited to benefits calculated on the basis of past income, not on the basis of

medical expense incurred as a result of the disability. Indeed, Congress distinguished "hospital insurance benefits" in § 426 and "medical insurance benefits" in § 1395j for the disabled from "disability insurance benefits" for the disabled. This congressional usage supports the Court's conclusion that disability insurance benefits are not the same as medical and health insurance benefits like those required by the Hawaii Act.

The federal Railroad Unemployment Insurance Act, 45 U.S.C. §§ 351-367, is another federal disability insurance law which provides benefits limited to wage replacement. Under that Act, railroad employees unable to work because of physical or psychological illness or injury receive daily benefits calculated on the basis of their income. The only type of disability insurance benefit contemplated by this Act is wage replacement.

The legislative history of the Welfare and Pension Plans Disclosure Act of 1958, Pub.L.No. 85-836, 72 Stat. 997 ("WPPDA") (repealed by § 111(a)(1) of ERISA, 29 U.S.C. § 1031(a)(1)) also provides some guidance to legislative intent in ERISA. The language of § 4(b)(3) of ERISA evolved from language first used by Congress in § 4(b)(2) of WPPDA, 29 U.S.C. § 303(b)(2). Section 4(b)(2) provides that WPPDA "shall not apply to an employee welfare or pension benefit plan if—* * * such plan was established and is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation disability insurance laws." That phrase was used verbatim in § 101(b)(2) of H.R. 2, 93d Cong., 1st Sess. (1973), the bill that eventually became ERISA. Since WPPDA and ERISA were enacted sixteen

years apart and since the language of the exemption clause in the two Acts is slightly different,[2] the meaning of disability insurance laws in the 1958 Act is not determinative of the interpretation of the 1974 Act, as defendants contend. Nevertheless, Congress' intent in the earlier Act is relevant to its intent in the later Act.

In recommending the enactment of S. 2888, the bill which eventually became WPPDA, the Senate Committee on Labor and Public Welfare stated that "the temporary disability insurance laws of a few of the States * * * are designed to replace, in part, the loss of the wages of the family breadwinner during periods of temporary disability." Sen.Rep.No. 1440, 85th Cong., 2d Sess. 6, 1958 U.S. Cong. & Adm.News 4142. That definition excludes state laws like the Hawaii Act which require health care benefits.

As the citation to the table following this quotation shows, the Senate Committee relied in 1958 upon evidence which it compiled in 1956 during its investigation of welfare and pension plans. The final report of that investigation discussed disability insurance:

> "Temporary disability insurance, as distinguished from workmen's compensation insurance, is not provided by Federal statute except in a few instances, such as railroad retirement, maritime and certain phases of State unemployment insurance laws. Four States do require such insurance: Rhode Island has an exclusively publicly operated plan; California, New Jersey, and New York permit coverage through in-

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[2]During the course of redrafting H.R. 2, the phrase "was established and" before "is maintained" was deleted, and a comma and "and" were inserted between "unemployment compensation" and "disability insurance."

> surance companies, a State fund, or self-insurance." S.Rep. No. 1734, 84th Cong., 2d Sess. 16 (1956).

None of the examples of disability insurance laws mentioned in this Report are comparable to the Hawaii Act.

The first example of a disability insurance law, the Federal Railroad Unemployment Insurance Act, as discussed at page [A-18], *supra*, provides insurance only against disabling illnesses and injuries and benefits limited to wage replacement.

The second example of disability insurance laws given in S.Rep.No. 1734 involves maritime law. The traditional maritime remedy of cure, usually linked with maintenance, provides for compensation of all medical expenses incurred as a result of illness or injury while in the service of a ship. The illness or injury need not be causally related to shipboard duties. *Calmar S.S. Corp. v. Taylor*, 303 U.S. 525 (1938); G. Gilmore & C. Black, The Law of Admiralty, 287-288 (2d ed. 1975). The shipowner is also obligated to provide cure if the injury is received on shore leave. *Aguilar v. Standard Oil Co.*, 318 U.S. 724 (1943); Gilmore & Black, *supra*, at 289-290.

It is doubtful that Congress intended by this reference to suggest that disability insurance for all workers generally includes coverage of medical care for nonoccupational illness and injury. Maritime law is *sui generis*. The relationship between marine employers and employees has long been recognized as fundamentally different from the relationship between terrestial employers and employees:

> "Unlike men employed in service on land, the seaman, when he finishes his day's work, is neither relieved of

> obligations to his employer nor wholly free to dispose of his leisure as he sees fit. Of necessity, during the voyage he must eat, drink, lodge and divert himself within the confines of the ship. In short, during the period of his tenure the vessel is not merely his place of employment; it is the framework of his existence. For that reason, among others, his employer's responsibility for maintenance and cure extends beyond injuries sustained because of, or while engaged in, activities required by his employment." *Aguilar v. Standard Oil Co., supra,* 318 U.S. at 731-732.

This unique relationship also explains why the employer's liability extends to illnesses and injuries incurred on shore leave:

> "To relieve the shipowner of his obligation in the case of injuries incurred on shore leave would cast upon the seaman hazards encountered only by reason of the voyage. The assumption is hardly sound that the normal uses and purposes of shore leave are 'exclusively personal' and have no relation to the vessel's business. Men cannot live for long cooped up aboard ship, without substantial impairment of their efficiency, if not also serious danger to discipline. Relaxation beyond the confines of the ship is necessary if the work is to go on, more so that it may move smoothly. No master would take a crew to sea if he could not grant shore leave, and no crew would be taken if it could never obtain it. Even more for the seaman than for the landsman, therefore, 'the superfluous is the necessary . . . to make life livable' and to get work done." *Aguilar v. Standard Oil Co., supra,* 318 U.S. at 733-734 (footnote omitted).

This conclusion is supported by the reluctance of courts to extend the obligation of maintenance and cure to "commuter seamen" whose employment is analogous to land-

based employment. Gilmore & Black, *supra*, at 292. Finally, the shipowner's obligation to provide cure is fundamentally different from Hawaii employers' duty to provide prepaid health care coverage because seamen are entitled to free medical care from United States Public Health Service Hospitals, 42 U.S.C. § 249(a), and because seamen's recovery for cure is limited to medical care "not at the disposal of the seaman through recourse to that service." *Calmar S.S. Corp. v. Taylor, supra*, 303 U.S. at 531; *Benton v. United Towing Co.*, 120 F.Supp. 638, 641 (N.D.Cal. 1954), *aff'd on other grounds*, 224 F.2d 558 (9 Cir. 1955) (*per curiam*); *Roberson v. S/S American Builder*, 265 F. Supp. 794, 796-797 (E.D.Va. 1967). For all these reasons, maritime law includes a special kind of disability insurance law not closely analogous to the others mentioned in the Senate Report in 1956 or to the Hawaii Act.[3]

Senate Report No. 1734 also identified four states, New Jersey, Rhode Island, New York, and California, which required disability insurance. In all four of those states, the amount of the primary benefit is calculated on the basis of the worker's wages before he suffered the disability. N.J. Stat. Ann. § 43:21-40 (West); R.I. Gen. Laws § 28-41-4.5;

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[3]Another predicate for the comprehensive protection of sailors in maritime law is that the law has always taken a very dubious view of their character. Defendants do not analogize the Hawaii Act to maintenance and cure on the ground that citizens of Hawaii, like sailors, are characterized by "habits of gross indulgence, carelessness, and improvidence." *Harden v. Gordon*, 11 Fed.Cas. 480, 483, Case No. 6,047 (C.C.D. Me. 1823) (Story, J.). Nor do defendants argue that the state has compelling interest in requiring employee benefit plans to cover alcohol abuse because of the "classic predisposition" of Hawaiians to intemperate use of stimulants. *Cf. Aguilar v. Standard Oil Co.*, 318 U.S. 724, 731 (1943).

N.Y. Work.Comp.Law § 204 (McKinney); Cal.Unemp.Ins. Code § 2655 (West). In two of those states the stated purpose of the disability insurance is to "replace wage loss." N.J.Stat.Ann. § 43:21-26 (West); Cal.Unemp.Ins. Code § 2601 (West).

New York and California provide variations on this theme of wage replacement. By administrative regulation, New York permits employers to implement plans with "other benefits directly related to disability" that are "at least as favorable" to the worker as the statutory benefits, including hospital and medical benefits if their value is comparable to that of the cash benefits calculated on the basis of wages. Sections 355.8 and 375.1, Rules of N.Y. Workmen's Compensation Board, reprinted in Appendix to N.Y.Work.Comp.Law (1977 Supp. McKinney). In other words, that benefit can be paid either to the disabled worker or to the organization which provides health care to the disabled worker, but in either case, the amount of the payment depends on wages. This controversial[4] administrative interpretation does not signal a change from the basic policy of the New York disability insurance law to replace a portion of wages lost because of disabling illness or injury.

California provides nominal medical care benefits to hospitalized disabled people under the Jesse Mayo Disability Insurance Hospital Benefits Law. Cal.Unemp.Ins. Code §§ 2800-2804 (West). When first enacted, the law provided eight dollars per day for up to twelve days, 1949 Cal. Stats. ch. 951, § 2, and the maximum has since been in-

[4]G. Osborn, Compulsory Temporary Disability Insurance in the United States 119-120 (1953).

creased to twelve dollars per day for up to twenty days. Cal.Unemp.Ins.Code § 2801 (West). The major benefit available to disabled workers is still the weekly cash payment calculated on the basis of wages during a defined period.[5] There is no indication that Congress was aware of the relatively minor provisions concerning hospital benefits in the California disability insurance law.

In sum, the federal and state disability insurance laws cited in Senate Report No. 1734 were primarily designed to replace income lost during periods of disability. Even more significant is the fact that the only states which now have disability insurance laws are the four states mentioned in this Senate Report and Hawaii, which, in addition to its health insurance law, has a disability insurance law which provides benefits calculated on the basis of wages to workers who are unable to perform work due to illness or injury, Haw.Rev.Stat. ch. 392. Unempl.Ins.Rep. (CCH) ¶2510.[6] When Congress drafted the exemption clause of ERISA, no disability insurance law provided the type of benefits required by the Hawaii Act. There is no reason to

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[5]According to the treatise most heavily relied on by defendants, the decision in 1949 to provide hospital benefits in addition to wage-replacement benefits was not part of a major rethinking of the purpose and function of disability insurance. The hospital benefits were provided "as an alternative to an increase in cash benefits • • • in an effort to appease labor after the defeat of [a] cash-benefit bill." G. Osborn, *supra*, at 119 n.47.

[6]Puerto Rico also has a disability insurance law which operates according to the same principles. P.R.Laws Ann. tit. II §§ 201-212. This law also provides for death and dismemberment benefits of fixed amounts. § 203(f).

think that Congress intended to include Hawaii's unique law in its definition of disability insurance laws.[7]

Defining disability insurance laws in terms of the types of benefits they provide may seem rather technical, but ERISA was drafted by specialists in the field of pension law familiar with the intricacies and nuances of that subject. In such a case, "it is incumbent on [courts] to give the word its technical meaning * * * if the word be deemed to have a peculiar connotation for those intimate with" the subject matter of the statute. *NLRB v. Coca-Cola Bottling Co.*, 350 U.S. 264, 269 (1955) (interpretation of term "officer" of labor organization). Some state disability insurance laws, like California's, may require a few additional supplemental benefits, but no state disability insurance law provides the broad range of health care benefits that the Hawaii Act requires. Indeed, defendants note with pride that the Hawaii Act is the first state health insurance law in the nation. Since the Hawaii Act requires insurance against more than disabilities and since it requires significantly different types of benefits than disability insurance

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[7]Defendants rely heavily on a book by Grant M. Osborn, *supra*, to establish that disability insurance laws provide medical benefits. However, Osborn's position is not that such laws *do* provide those benefits but that they *should* provide them. *Id.*, at 119.

Plaintiffs contend such books and articles are irrelevant in the absence of evidence that Congress was specifically aware of them. While the relevance of such items may be limited, one guide to interpretation of congressional language is how the terms, especially more or less technical terms, were commonly used, and treatises in the field are one indication of this usage. *Train v. Colorado Public Interest Research Group*, 426 U.S. 1, 9-10 (1976), establishes that no type of aid to statutory construction is categorically excluded from a court's consideration.

laws, it is not a disability insurance law within the meaning of § 4(b)(3).

This analysis of the term "disability insurance laws" demonstrates that neither its plain nor its technical meaning comprehends health insurance laws. Under the so-called plain meaning rule of statutory construction, "[w]here the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion." *Caminetti v. United States,* 242 U.S. 470, 485 (1917). That rule was rejected by the Supreme Court in *Train v. Colorado Public Interest Research Group,* 426 U.S. 1, 23-24 (1976) (*"CPIRG"*), where it concluded "after a review of the legislative materials that reliance on the 'plain meaning' of the words [of the statute] contributes little to our understanding of" congressional intent. However, reliance on the plain meaning of judicial language can sometimes be as treacherous as reliance on the plain meaning of legislative language, and the holding in *CPIRG* did not make a federal rule of law of "the quip that only when legislative history is doubtful do you go to the statute." *See* Frankfurter, Some Reflections on the Reading of Statutes, 47 Colum.L.Rev. 527, 543 (1947).

The Supreme Court in *CPIRG* held only that courts can and should consider legislative history even if the language of the statute is clear. *CPIRG, supra,* 426 U.S. at 9-10, citing *United States v. American Trucking Ass'ns,* 310 U.S. 534, 543-544 (1940) (no rule of law forbidding resort to any aid in interpretation), and Murphy, Old Maxims Never Die: The "Plain-Meaning Rule" and Statu-

tory Interpretation in the "Modern" Federal Courts, 75 Colum.L.Rev. 1299 (1975). The issue in *CPIRG* was whether the Environmental Protection Agency had authority under the Federal Water Pollution Control Act to regulate the discharge of nuclear materials subject to regulation by the Atomic Energy Commission. The Court relied on the unambiguous and uncontradicted legislative history dealing with that precise issue to decide that the unelaborated statutory term "radioactive materials" did not include radioactive materials regulated by the Atomic Energy Commission.

The rule of statutory construction established in *CPIRG* is that unambiguous evidence in the structure and history of the legislation can rebut a contrary presumption created by unambiguous language of the legislation. Courts cannot amend statutes in the guise of interpreting them, and they must presume that Congress meant what it said. But the presumption, though heavy, is rebuttable. It is not yet the prevailing federal rule that "[t]here is no surer way to misread any document than to read it literally." *Giuseppi v. Walling,* 144 F.2d 608, 624 (2 Cir. 1944) (L.Hand, J., concurring), *aff'd sub nom. Gemsco Inc. v. Walling,* 324 U.S. 244 (1945).[8] Only "unmistakable support in the history and structure of the legislation," *Blue Chip Stamps v. Manor Drug Stores,* 421 U.S. 723, 756 ((1975) (Powell, J., concurring), can justify a rejection of otherwise unambiguous language. Such "unmis-

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[8]Belying the plain meaning of that statement, Judge Hand went on to admit that the words of a statute, though "by no means final," "are by far the most decisive evidence" of how Congress would have dealt with unforeseen situations. *Id.*, at 624.

takable support" for defendants' construction is absent here.

The purpose of the exemption clause in § 4(b)(3) was clearly not to accommodate all types of social insurance laws broadly analogous to workmen's compensation, unemployment compensation, or disability insurance laws that require the adoption of employee benefit plans. The language of the exemption clause simply does not permit this expansive interpretation.

Congress' statement of purposes concerning the plan termination insurance requirements does not compel a broad reading of the exemption clause. One congressional purpose in its plan for termination insurance was "to encourage the continuation and maintenance of *voluntary* private pension plans for the benefit of their participants * * *." Section 4002(a)(1), 29 U.S.C. § 1302(a)(1) (emphasis added). Under § 4021(b)(11), 29 U.S.C. § 1321(b)(11), employee benefit plans "maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws" are exempt from the requirement of plan termination insurance. There is no reason to think that Congress meant different things when it used the same exemption language in §§ 4(b)(3) and 4021(b)(11), and § 4002(a)(1) gives some basis to conclude that Congress meant to exempt all voluntary plans from ERISA. Nevertheless, when it came to implementing its stated purposes, Congress used narrow language in § 4021(b)(11) inconsistent with the broader language of § 4002(a)(1), and the Court must assume that the language in the operative

section, § 4021(b)(11), more accurately expresses Congress' intent.[9]

Had Congress intended its enumeration of state laws in the exemption clause to be illustrative rather than exhaustive, it could have expressed that intention in plain language. Congress could have included a more open-ended exception broad enough to cover health insurance laws. New Jersey, for example, does not provide benefits under its disability insurance law if the potential recipient is entitled to benefits "under any unemployment compensation or similar law, or under any disability or cash sickness benefit or similar law, of this State or of any other State or of the Federal Government." N.J.Stat.Ann. § 43:21-20. Even more simply and directly, Congress could have said—and legislation now pending in Congress would amend § 4(b)(3) to say[10]—that plans maintained solely to comply with state disability *and* health insurance laws are exempt from ERISA. Certainly Congress was familiar

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[9]Defendants also contend that the frequent references in the legislative history to "private" benefit plans reflect a congressional decision to limit ERISA to voluntary plans. See Defendants' Memorandum in Reply to Plaintiff's Opposition to Cross Motion for Summary Judgment, at 21-23. These references to "private" plans were intended to refer to plans which are maintained neither by the government nor for government employees. For example, House Report No. 93-533, 93d Cong., 2d Sess., 1974 U.S. Code Cong. & Adm.News 4640, discussed the growth of private plans and compared governmental plans like the Railroad Retirement Act and the Social Security Act with private plans. Both those Acts established funds administered by the government for the payment of benefits. Alternatively, private plans contrast with public plans, as in the case of the exemption for government plans for employees in the public sector, § 3(3), 29 U.S.C. § 1002(32).

[10]S. 1383, 95th Cong., 1st Sess. (1977).

with the concept of health, as opposed to disability insurance. Congress' failure to include such language must be interpreted as a decision not to exempt employee benefit plans maintained to comply with types of state social insurance laws not enumerated in § 4(b)(3).

Congress' intent to limit this exemption is also manifested directly in the language of § 4(b)(3). That section exempts employee benefit plans which are "maintained *solely* for the purpose of complying with" the enumerated laws. (Emphasis added). Standard contends that because its health insurance plan, which is voluntarily maintained for employees outside Hawaii as well as for its Hawaiian employees, provides most of the benefits required by the Hawaii Act, it is not maintained "solely" to comply with the Hawaii Act and is therefore covered only by ERISA. If that is the test to determine whether a plan is covered only by ERISA or only by a state social insurance law, some interstate businesses would have to comply with the Hawaii Act and others would not, depending on whether the particular business would voluntarily have adopted a generally equivalent plan. Congress did not intend the Department of Labor or the courts to engage in a company-by-company inquiry to determine whether each employee benefit plan would have had the same general contours even if it were not required by law. Congress intended states to apply their disability insurance laws against all interstate companies or against none.

The test to determine whether ERISA applies to an employee benefit plan is whether employee benefit plans providing that general type of benefit are usually maintained solely to comply with state social insurance laws

or generally maintained for other or additional reasons. Employee benefit plans meeting the carefully structured and comprehensive requirements of state workmen's compensation, unemployment compensation and disability insurance laws clearly fall within the former category. In contrast, the Hawaii Act regulates a type of employee benefit plan generally and historically maintained for other reasons, and it requires a combination of features duplicated in many voluntary plans. By exempting only those plans "maintained solely" to comply with state social insurance laws, Congress intended to make ERISA reach all types of plans not generally required by state law. In other words, Congress intended to permit only traditional forms of state social insurance laws to operate, and the Hawaii Act, the first state health insurance law in the country, is hardly a traditional state social insurance law.

Congress' intent to confine the exemption clause within strict limits is also demonstrated by the statements of conference committees and legislative leaders and sponsors discussed by this Court in *Hewlett-Packard Co. v. Barnes*, 425 F.Supp. 1294, 1298-1300 (N.D.Cal. 1977) (on appeal). Defendants' expansive interpretation of § 4(b)(3) is inconsistent with the statutory history as well as the legislative language.

Finally, the United States Department of Labor has interpreted ERISA to apply to Standard's medical plan and to preempt the Hawaii Act. Opinion Letter 75-22, [1976] Pens.Plan Guide (CCH) ¶ 25,136. Courts must respect "the interpretation given the statute by the officers or agency charged with its administration," particularly when the interpretation is made contemporaneously with the enact-

ment of the statute. *Udall v. Tallman*, 380 U.S. 1, 16 (1965); *Norwegian Nitrogen Products Co. v. United States*, 288 U.S. 294, 315 (1933). Instead of delegating this function to the Secretary of Labor, *cf.* § 505, 29 U.S.C. § 1135, Congress itself prescribed in § 4(b)(3) the standards for determining whether a state social insurance law is exempt from ERISA, so the Department of Labor interpretation is entitled to "important but not controlling significance." *See Batterton v. Francis*, ... U.S. ....., 45 U.S.L.W. 4768, 4770 (June 20, 1977). The interpretation is consistent with the language and purpose of the statute.

The Court recognizes that the legislative history discloses no explicit congressional decision that state health insurance laws should be preempted. Neither the parties nor the Court in its independent research found any specific discussion in Congress about the pros and cons of that course.

Congress had three options concerning the regulation of benefits in employee benefit plans: federal regulation, state regulation, and private regulation. Either the federal government, the state governments, or the parties themselves could decide what benefits a plan should provide. It is uncertain whether Congress considered federal regulation as a serious option. There is some indication in the legislative history that Congress thought voluntary regulation was affirmatively desirable. In their reports, for example, both the House Committee on Ways and Means and the Senate Committee on Finance stated that a "fundamental aspect of present law, which the committee bill continues, is reliance on voluntary action by employers * * * for the establishment of retirement plans." H.R.Rep. No. 93-807,

93d Cong., 2d Sess., *reprinted in* 1974 U.S. Code Cong.& Adm.News 4677; S.Rep.No. 93-383, 93d Cong., 2d Sess., *supra,* at 4898-4899. The Senate Committee on Labor and Public Welfare noted "the freedom of decision-making vital to pension plans" and "the interests of employers and labor organizations in maintaining flexibility in the design and operation of their pension programs." S.Rep.No. 93-127, 93d Cong., 2d Sess., *supra,* at 4849-4850. The preponderance of the legislative evidence, however, indicates that Congress simply accepted voluntary regulation as a premise which limited its ability to regulate the administration of such plans. As the House Committee on Education and Labor reported, "the committee has been *constrained* to recognize the voluntary nature of private retirement plans." H.R.Rep.No. 93-533, 93d Cong., 2d Sess., *supra,* at 4639 (emphasis added). Because "under our voluntary pension system, the cost of financing pension plans is an important factor in determining whether any particular retirement plan will be adopted and in determining the benefit levels if a plan is adopted," "in the case of those requirements which add to the cost of financing retirement plans, the committee has sought to adopt provisions which strike a balance between providing meaningful reform and keeping costs within reasonable limits." S.Rep.No. 93-383, 93d Cong., 2d Sess., *supra,* at 4904. Whether or not Congress rejected federal regulation of benefits on its merits, it apparently did not reject the second option of state regulation on its merits, although it was generally concerned about the cost to employees benefit plans of complying with government regulation.

The Court is reluctant to impute to Congress an intent to preempt state laws which involve such important legiti-

mate state interest without any specific evidence of this intent in the legislative history. Where Congress acts in a field traditionally occupied by the states, the Court must begin " 'with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.' " *Jones v. Rath Packing Co., supra,* 45 U.S.L.W. at 4324, *quoting Rice v. Santa Fe Elevator Corp., supra,* 331 U.S. at 230. That reluctance is increased because Congress itself recognized the need to accommodate state interests in this area. Congress intended in ERISA to standardize the law governing employee benefit plans. It nevertheless permitted the states to continue to enforce their workmen's compensation, employment compensation, and disability insurance laws although those laws vary substantially from state to state. Mere incantation of the congressional goal of uniformity in regulation cannot resolve this question of statutory construction.

But just as the legislative history contains no unambiguous evidence that Congress intended to preempt state health insurance laws, it contains no unambiguous evidence that Congress did not intend to preempt them. The legislative history is for the most part silent or at best conflicting on this issue. As the discussion in Part V, A, demonstrates, the structure and purposes of ERISA do not necessarily require the exemption of employee benefit plans maintained to comply with state health insurance laws. Given the state of the legislative history, the only sure guide to congressional intent is the language Congress used, and that language clearly means that ERISA preempts state health insurance laws. An ambiguous legislative history, even combined with presumptions against

implicit revisions of "'the federal-state balance,'" *Jones v. Rath Packing Co., supra,* 45 U.S.L.W. at 4324, *quoting United States v. Bass,* 404 U.S. 336, 349 (1971), and against interpretations which require courts to decide constitutional questions, is insufficient to overcome the plain meaning of the statute.

"Here as so often there is a choice between uncertainties" in statutory construction, *Burnet v. Guggenheim,* 288 U.S. 280, 288 (1933), but it is more likely that Congress intended in ERISA to preempt state health insurance laws than that it did not. For all the foregoing reasons, the Court concludes that employee benefit plans maintained in whole or in part to comply with state health insurance laws are not exempt from the requirements of ERISA.

IV

Defendants' final statutory argument is that the Hawaii Act does not relate to Standard's employee benefit plan within the meaning of § 514 of ERISA, 29 U.S.C. § 1144.

Section 514(a) provides in relevant part:

> "Except as provided in subsection (b) of this section, the provisions of this subchapter [concerning reporting, disclosure, vesting, funding and fiduciary duties] and subchapter III of this chapter [concerning plan termination insurance] shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title."

Section 514(b) excludes specified types of state laws, primarily banking, insurance, and criminal laws, from this broad preemption clause.

The construction of § 514(a) proposed by defendants would result in partial preemption. The requirements of ERISA concerning the administration of employee benefit plans would apply to plans mandated by the Hawaii Act—only § 4(b)(3) exempts benefit plans from the application of ERISA. Insofar as the Hawaii Act does not regulate matters covered by ERISA (basically reporting, disclosure, funding, vesting, and fiduciary duties), it would not, under this interpretation, be superseded because it does not relate to employee benefit plans in any of the ways that ERISA relates to employee benefit plans.[11] ERISA and the Hawaii Act would be complementary, each occupying part of a field not occupied by the other. Under this interpretation, Hawaiian workers would obtain the protection of both the Hawaii Act, which regulates benefits but not administration, and ERISA, which regulates administration but not benefits. However wise Congress might have been to take this approach to preemption of state laws regulating employee benefit plans, Congress clearly rejected it.

The starting point is necessarily the language of the statute. In any normal meaning, the Hawaii Act relates to employee benefit plans. Laws relating to benefits of employee benefit plans relate to those plans as much as laws relating to their administration. There is simply no basis in

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[11]Any argument that a state law concerning the same subject matter as ERISA does not "relate to" employee benefit plans within the meaning of § 514(a) is unsupportable. As the evolution of the language of the preemption clause (*see Hewlett-Packard Co. v. Barnes, supra,* 425 F.Supp. at 1298 & nn. 13-14) unequivocally shows, that section was intended at the very least to preempt state laws regulating disclosure, reporting, vesting, funding, and fiduciary duties of plan administrators.

the language of § 514(a) for distinguishing between types of state laws all of which "relate to" employee benefit plans. When Congress says "any and all State laws," courts cannot conclude that Congress really meant to say "some but not all State laws."

The language of § 514(c)(2) buttresses this interpretation. In § 514(c)(2) Congress defined the term "State" to include "a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter." Obviously Congress intended that § 514 have broad preemptive effect. To hold that a state health insurance law does not regulate directly or indirectly the terms and conditions of employee benefit plans would distort the meaning of those words beyond recognition.

Any lingering suspicion that § 514(a) might not mean what it says vanishes when the legislative history is examined. Congress chose the term "relate to" only after rejecting several narrower alternative phrasings. The evolution of § 514(a) is traced in *Hewlett-Packard Co. v. Barnes, supra,* 425 F.Supp. at 1298 & nn. 13-14. This evolution indicates a legislative intent to expand the scope of the preemptive clause and forecloses any interpretation which would narrow its scope beyond its plain language. That interpretation, if it needs reinforcement, is supported by statements of the conference committee and of the legislative sponsors of ERISA which are set forth in *Hewlett-Packard Co. v. Barnes, supra,* 425 F.Supp. at 1298-1300.

Congress also explicitly preempted state laws which, if not at the time ERISA was enacted but thereafter, related to employee benefit plans. Whether Congress should have passed a law which preempted state laws which related to employee benefit plans in novel and perhaps unforeseen ways is a question for Congress and not for the Court.[12]

Under § 514(a), ERISA supersedes the Hawaii Act.

V

Defendants contend that this construction of ERISA makes it unconstitutional both under the Due Process Clause of the Fifth Amendment and under the Tenth Amendment. Defendants do not contend that Congress lacks the authority under the Commerce Clause generally to regulate in the area of employee benefit plans involving interstate commerce or that federal regulation can never preemept state regulation occupying the same field.

The Court concludes that ERISA as construed is constitutional.

A

Defendants argue that there is no valid basis for distinguishing state workmen's compensation, unemployment compensation, and disability insurance laws from state

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[12]In view of its interpretation of § 514(a), the Court need not decide whether state health insurance laws are implicitly preempted because they stand "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz*, 312 U.S. 52, 67 (1940), even though they are not explicitly preempted. *See Jones v. Rath Packing Co., supra*, 45 U.S.L.W. 4323.

health insurance laws and that the exemption in § 4(b)(3) for the former and not the latter deprives defendants of due process of law.

The Due Process Clause of the Fifth Amendment does require that Congress employ only those classifications that are rationally related to the achievement of legitimate federal goals. *Richardson v. Belcher*, 404 U.S. 78, 84 (1971); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1953). The Supreme Court's definition of the standard of review under the Equal Protection Clause of the Fourteenth Amendment applies equally to this litigation under the Fifth Amendment:

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis', it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.' *Metropolis Theatre Co. v. City of Chicago*, 228 U.S. 61, 69-70. 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.' *McGowan v. Maryland*, 366 U.S. 420, 426." *Dandridge v. Williams*, 397 U.S. 471, 485 (1970).

The legislative purposes in the preemption provisions are clear and legitimate. Congress wanted employee benefit plans subject to uniform federal regulation so that administrators of plans would not face the uncertainty and

expense of compliance wth diverse and often conflicting state regulations which often provided less protection for beneficiaries than Congress considered necessary. *See Hewlett-Packard Co. v. Barnes, supra,* 425 F.Supp. at 1298-1300. The only question is whether preempting health insurance laws but not certain other types of state social insurance laws rationally furthers that purpose. The Court concludes that Congress had a rational basis for treating health insurance laws differently from the laws exempted in § 4(b)(3).

Congress could have recognized a greater need to accommodate state disability insurance laws because disabling illness and injury impose a double burden on their victims, who lose income as well as incur medical expenses. In contrast, workers who suffer from nondisabling illness and injury maintain a steady income, and medical expenses for treatment of nondisabling medical problems may usually be less than those expenses for disabling problems. The need to permit state regulation of employee benefit plans through disability insurance laws is arguably stronger than the state interest in health insurance laws.

Because Congress' concern about the costs to employers of complying with government regulation of benefit plans seems to have been premised on the voluntary nature of the plans, *see* pp. 20-21, *supra,* the Court is uncertain whether minimizing the cost to interstate employers of compliance with state laws regulating types of benefits is a federal interest which ERISA was designed to further. If it is, the distinction between state health and disability insurance laws rationally furthers that interest. Premiums

for health insurance may be larger than premiums for disability insurance for several reasons: Health benefits must be paid in a larger number of cases than disability benefits because health insurance policies protect against nondisabling as well as disabling illnesses and injuries; In cases of disabling injuries, the cost of medical care may often exceed the cost of replacing income in view of the explosive increase in health care costs in the last decade; The amount of liability can be predicted more accurately where liability depends on previous income than where it depends on medical expenses beyond the knowledge and control of the employer, and this uncertainty also increases premium costs. Permitting state health insurance laws to continue to operate could seriously undermine the congressional goal of limiting the cost of employee benefit plans to employers.

Health insurance laws differ from disability insurance laws because of their novelty as well as because of their content. One major purpose of ERISA was to protect the interests of employees in benefit plans. Congress could reasonably conclude that established state regulatory schemes like workmen's compensation, unemployment compensation, and disability insurance comprehensively regulated the administration as well as the benefits of mandated plans and that they thereby adequately ensured the financial soundness of those plans. The Hawaii Act provides a good example of why that conclusion is less justified in the case of novel types of state social insurance laws. Hawaii goes out of its way to insist that it "does not regulate to ensure the honest administration of employee bene-

fit plans."[13] This means that workers covered by plans required by the Hawaii Act lack the basic legal protections which ERISA was designed to provide concerning disclosure, reporting, funding, vesting, and fiduciary duties, if in fact the Hawaii Act is not preempted. Although the Hawaii Act is certainly not a "hastily contrived" state statute like some of the ones Congress intended to preempt, see Statement of Senator Javits, 120 Cong.Rec. 29942 (1974), quoted in *Hewlett-Packard Co. v. Barnes, supra,* 425 F.Supp. at 1299, there are significant gaps in the protection it provides—gaps which ERISA was intended to close. Plans covered by the § 4(b)(3) exemption clause are exempt from all the requirements of ERISA, *see* Part IV, *supra,* and Congress did not intend to permit those essential minimum requirements to be avoided.

Novel types of state social insurance laws undermine the legislative goal of uniformity of regulation in ways that the more established of those laws do not. An important purpose of ERISA's preemption provision was to end conflicting regulation of plans of interstate employers. State laws like workmen's and unemployment compensation and disability insurance laws were first enacted long before ERISA, and diversity concerning those plans is the settled

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[13]Defendants' Memorandum in Reply to Plaintiff's Opposition to Cross Motion for Summary Judgment, at 34. Defendants made this statement in their attempt to minimize the overlap between ERISA and the Hawaii Act. The State does protest a little too much, the Court thinks. Some provisions of the Hawaii Act do regulate the administration of health insurance plans. *See, e.g.,* § 393-14 (vesting of protection for new employees). The State is, however, substantially correct that the Hawaii Act does not attempt comprehensive regulation of administration of benefit plans.

norm for interstate employers. Comparable adjustment to novel types of state social insurance laws has not been accomplished, and compliance with conflicting regulations of nontraditional types of state social insurance laws may impose significantly heavier burdens on interstate employers.

Preempting health insurance laws but not workmen's compensation, unemployment compensation, and disability insurance laws rationally furthers legitimate federal interests. Defendants may believe that permitting health insurance laws frustrates those federal interests far less than preempting them frustrates legitimate interests of the States. But they have failed to prove that Congress' balancing of the costs and benefits was irrational, and only if they make such a showing can the Court hold § 4(b)(3) of ERISA unconstitutional under the Due Process Clause.

Congress tried to accommodate the States' interests. Workmen's compensation, unemployment compensation, and disability insurance laws impose conflicting requirements on employee benefit plans of interstate employers and may sometimes provide less protection of financial soundness than ERISA. The inclusion of § 4(b)(3) demonstrates that Congress was willing to sacrifice its goals of uniformity and minimum protection to substantive state interests. Perhaps Congress should have been willing to accommodate further, but its decision to limit the exemption clause to workmen's compensation, unemployment compensation, and disability insurance laws was not irrational.

B

By preempting state health insurance laws, Congress did not violate the limits placed by the Tenth Amendment on its authority under the Commerce Clause.

The Tenth Amendment imposes substantive limitations on Congress' power under the Commerce Clause.

> " 'While the Tenth Amendment has been characterized as a "truism," stating merely that "all is retained which has not been surrendered," *United States v. Darby,* 312 U.S. 100, 124 (1941), it not without significance. The Amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs States' integrity or their ability to function effectively in a federal system.' " *National League of Cities v. Usery,* 426 U.S. 833, 842-843 (1976), *quoting Fry v. United States,* 421 U.S. 542, 547 n.7 (1975).

Federal legislation which significantly impairs a State's ability to perform functions essential to its existence as a State, *National League of Cities v. Usery, supra,* 426 U.S. at 845, transgresses the limits of the Tenth Amendment. The Court in *National League of Cities* drew a very clear distinction between "the authority of Congress to enact laws regulating individual businesses necessarily subject to the dual sovereignty of the Nation and of the State in which they reside" and "a similar exercise of congressional authority directed, not to private citizens, but to the States as States." *Id.* at 845. Defendants' argument requires the Court to hold that state regulation of private health insurance plans involves an essential and traditional function of state government, and this the Court cannot do.

Regulation of health insurance benefits available to workers is not a function like "fire prevention, police protection, sanitation, public health, and parks and recreation" which are "typical of those performed by state and local governments in discharging their dual functions of administering the public law and furnishing public services." *Id.*, at 851 (footnote omitted). Such regulation of private employment relationships is certainly part of the legitimate activity of the States, and the approach of cases like *Lochner v. New York*, 198 U.S. 45 (1905) (state maximum hour law unconstitutional), which sought to deny this power to the States, has long been abandoned. Nevertheless, although this country may have become more of what some call a welfare state, it still cannot be said that regulation of private employment relationships is a function "which governments are created to provide" or a service "which the States have traditionally afforded their citizens." *Id.* at 851. ERISA regulates "the conduct of individual businesses necessarily subject to the dual sovereignty of the Nation and of the State in which they reside," *id.* at 845, and does not impair any essential attribute of state sovereignty.

Defendants make the novel argument that the Hawaii Act is an exercise of the taxing power because it requires employers to pay half of the health insurance premiums of their employees. Section 393-13. The power to tax is an essential function of the State with which the federal government cannot unreasonably interfere. But the Hawaii Act is not an exercise of that power. It is a peculiar type of tax indeed which requires the taxpayer to pay money not to the State but to another private

taxpayer, and the Supreme Court has defined taxes as money "paid to a State as a State." *Ill. Central R.R. v. Decatur*, 147 U.S. 190, 197 (1982). Federal regulation of state taxes would undermine a State's "ability to function effectively in a federal system." *Fry v. United States, supra*, 421 U.S. at 547 n.7, because the ability to raise revenue is necessary to the performance of basic governmental services. The money which employers are required by the Hawaii Act to contribute for the health insurance premiums of their employees does not enable the state to perform traditional essential governmental functions.

In effect, defendants' contention means that if private parties must spend money in order to comply with state regulation, that regulation is an exercise of the state's taxing power and therefore immune from federal regulation. That the Hawaii Act specifies the expenditures which private employers must make in order to comply with the statute does not validly distinguish the Hawaii Act from state regulation which indirectly rather than directly requires substantial expenditures for compliance—defendants themselves argue that the touchstone of a tax is that it is mandatory, not that its amount is calculated according to a specified formula. Acceptance of defendants' argument would turn the Tenth Amendment into an unconditional bar to any federal statute preempting regulation of private activities because compliance with governmental regulation inevitably costs money. The Tenth Amendment was never intended to make federal preemption of state laws unconstitutional, and the Court will not give it that effect.

VI

By enacting ERISA, Congress created a moratorium of indefinite length on the passage of health insurance laws. Congress could rationally have decided to take a different course. It troubles the Court, as it troubles defendants, that Congress preempted state health insurance laws apparently without specific discussion of the need for such a step. The workers whom ERISA was primarily intended to protect may be better off with state health insurance laws than without them, and the efforts of states like Hawaii to ensure that their citizens have low-cost comprehensive health insurance may be significantly impaired by ERISA's preemption of health insurance laws. Federal legislators should heed the admonition that Justice Brandeis addressed to the federal courts:

> "To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).[14]

Although this social experiment of Hawaii may pose no "risk to the rest of the country," it does impose a burden on interstate commerce which Congress has the

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[14]In fact, the Hawaii Act has been held up as a model for a national health insurance plan which the federal government should study. *See* Appendix A to Defendants' Memorandum in Opposition to Plaintiff's Motion for Summary Judgment.

power to remove. Not the courts but the legislature possess the primary responsibility to balance the interests of the national economy against the interests of the federal system. The Constitution places limits on that balancing, but Congress has not crossed those limits here. Defendants' remedy, if a remedy is necessary, is not in this Court but in Congress.

IT IS HEREBY ORDERED that plaintiff's motion for summary judgment is granted.

IT IS HEREBY FURTHER ORDERED that defendants' motions for summary judgment and to transfer this action to the District Court of Hawaii are denied.

IT IS HEREBY FURTHER ORDERED that counsel for plaintiff shall prepare an appropriate form of judgment, submit it to counsel for defendants for approval as to form, and submit it to the Court for execution within ten (10) days of the date of this order.

Dated: November 21, 1977.

/s/ CHARLES B. RENFREW

Charles B. Renfrew
United States District Judge

Appendix C

United States District Court for the
Northern District of California

C-76-2740 C.B.R.

Standard Oil Company of California,
a Delaware corporation,
Plaintiff,

vs.

Joshua C. Agsalud, Director of Labor and Industrial Relations of the State of Hawaii, et al.,
Defendants.

[Filed Dec. 5, 1977]

JUDGMENT FOR PLAINTIFF

Plaintiff *Standard Oil Company of California* having filed its motion for summary judgment on June 16, 1977, defendants having moved for change of venue on January 31, 1977, defendants having filed their cross-motion for summary judgment on June 20, 1977, the motions having been heard by the Court on July 21, 1977, the parties having presented written and oral argument and the Court having considered such written and oral argument and the factual information presented to the Court, the Court having determined that there is no genuine issue as to any material fact and that plaintiff is entitled to judgment as a matter of law, and good cause appearing therefor, it is hereby *Ordered, Adjudged* and *Decreed:*

1. Defendants *Joshua C. Agsalud,* Director of Labor and Industrial Relations of the State of Hawaii, and *Orlando K. Watanabe,* Administrator of the Disability Compensation Division of the Department of Labor and Industrial Relations of the State of Hawaii, and all persons acting for or on behalf of said defendants in their official capacities, are hereby permanently enjoined and restrained from, in any manner, enforcing any provisions of the Hawaii Prepaid Health Care Act of 1974, or any regulations promulgated thereunder, with respect to plaintiff, plaintiff's subsidiaries and plaintiff's medical plan, an employee benefit plan established and maintained by plaintiff pursuant to the terms of the Employee Retirement Income Security Act of 1974.

2. It is hereby declared that any enforcement of the Hawaii Prepaid Health Care Act of 1974, or any regulations promulgated thereunder, with respect to plaintiff, plaintiff's subsidiaries and plaintiff's medical plan, described above, is preempted by the provisions of the Employee Retirement Income Security Act of 1974.

3. Defendants' motions for summary judgment and to transfer this action to the District Court of Hawaii are denied.

4. Plaintiff shall recover its costs of suit herein.

Dated: December 2, 1977.

/s/ CHARLES B. RENFREW

Judge of the United States
District Court

Approved as to form:

/s/ MARIO R. RAMIL

Attorneys for Defendants

Appendix D

In the United States Court of Appeals
For the Ninth Circuit

No. 78-1095

Standard Oil Company of California,
Plaintiff-Appellee,

vs.

Joshua C. Agsalud, et al.,
Defendants-Appellants.

[Filed Dec. 16, 1980]

ORDER

Before: ANDERSON, SCHROEDER and FARRIS, Circuit Judges

The panel as constituted above has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

Appendix E

In the United States Court of Appeals
For the Ninth Circuit

No. 78-1095

Standard Oil Company of California,
Plaintiff-Appellee,

vs.

Joshua C. Agsalud, et al.,
Defendants-Appellants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Defendants-Appellants Joshua C. Agsalud, Director of Labor and Industrial Relations of the State of Hawaii, and Orlando K. Watanabe, Administrator of the Disability Compensation Division of the Department of Labor and Industrial Relations of the State of Hawaii, hereby appeal to the Supreme Court of the United States from the final judgment of the United States Court of Appeals for the Ninth Circuit affirming the judgment in favor of Plaintiff entered by the United States District Court for the Northern District of California. The judgment of the Court of Appeals was filed on October 15, 1980, and the Petition for Rehearing and Suggestion for Rehearing in Banc was denied on December 16, 1980.

This appeal is taken pursuant to 28 U.S.C. section 1254(2).

Dated: February 12, 1981, at San Francisco, California.

Respectfully submitted,

Wayne Minami
Attorney General
State of Hawaii

Carol K. Yamamoto
Deputy Attorney General

Mario R. Ramil
Marsha S. Berzon
Special Deputy Attorneys General

By MARSHA S. BERZON
Attorneys for Defendants-Appellants

Appendix F

Supreme Court of the United States

No. A-702

Joshua C. Agsalud, etc., et al.,
Appellants

v.

Standard Oil Company of California

ORDER

Upon consideration of the application of counsel for the appellants,

It is ordered that the time for docketing an appeal in the above-entitled case be, and the same is hereby, extended to and including May 1, 1981.

/s/ WILLIAM H. REHNQUIST
Associate Justice of the Supreme
Court of the United States

Dated this 20th day of February, 1981

Appendix G

STATUTES INVOLVED

1. Principal substantive provisions of the Hawaii Prepaid Health Care Act, Chapter 393, Hawaii Revised Statutes:

§ 393-1. Short title. This chapter shall be known as the Hawaii Prepaid Health Care Act.

§ 393-2. Findings and purpose. The cost of medical care in case of sudden need may consume all or an excessive part of a person's resources. Prepaid health care plans offer a certain measure of protection against such emergencies. It is the purpose of this chapter in view of the spiraling cost of comprehensive medical care to provide this type of protection for the employees in this State. Although a large segment of the labor force in the State already enjoys coverage of this type either by virtue of collective bargaining agreements, employer-sponsored plans, or individual initiative, there is a need to extend that protection to workers who at present do not possess any or possess only inadequate prepayment coverage.

This chapter shall not be construed to diminish any protection already provided pursuant to collective bargaining agreements or employer-sponsored plans that is more favorable to the employees benefited thereby than the protection provided by this chapter or at least equivalent thereto, provided that presently existing collective bargaining agreements shall not be affected by the provisions of this section.

§ 393-3. Definitions generally. As used in this chapter, unless the context clearly requires otherwise:

(1) "Department" means the department of labor and industrial relations.

(2) "Director" means the director of labor and industrial relations.

(3) "Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, a debtor in possession or receiver or trustee in bankruptcy, or the legal representative of a deceased person, who has one or more regular employees in his employment. "Employer" does not include:

(A) The State, any of its political subdivisions, or any instrumentality of the State or its political subdivisions;

(B) The United States government or any instrumentality of the United States;

(C) Any other state or political subdivision thereof or instrumentality of such state or political subdivision;

(D) Any foreign government or instrumentality wholly owned by a foreign government, if (i) the service performed in its employ is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof, and (ii) the United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent

exemption with respect to similar service performed in the foreign country by employees of the United States government and instrumentalities thereof.

(4) "Employment" means service, including service in interstate commerce, performed for wages under any contract of hire, written or oral, expressed or implied, with an employer, except as otherwise provided in sections 393-4 and 393-5.

(5) "Premium" means the amount payable to a prepaid health care plan contractor as consideration for his obligations under a prepaid health care plan.

(6) "Prepaid health care plan" means any agreement by which any prepaid health care plan contractor undertakes in consideration of a stipulated premium:

(A) Either to furnish health care, including hospitalization, surgery, medical or nursing care, drugs or other restorative appliances, subject to, if at all, only a nominal per service charge; or

(B) To defray or reimburse, in whole or in part, the expenses of health care.

(7) "Prepaid health care plan contractor" means:

(A) Any medical group or organization which undertakes under a prepaid health care plan to provide health care; or

(B) Any nonprofit organization which undertakes under a prepaid health care plan to defray or reimburse in whole or in part the expenses of health care; or

(C) Any insurer who undertakes under a prepaid health care plan to defray or reimburse in whole or in part the expenses of health care.

(8) "Regular employee" means a person employed in the employment of any one employer for at least twenty hours per week but does not include a person employed in seasonal employment. "Seasonal employment" for the purposes of this paragraph means employment in a seasonal pursuit as defined in section 387-1 by a seasonal employer during a seasonal period or seasonal periods for the employer in the seasonal pursuit or employment by an employer engaged in the cultivating, harvesting, processing, canning, and warehousing of pineapple during its seasonal periods. The director by rule and regulation may determine the kind of employment that constitutes seasonal employment.

(9) "Wages" means all remuneration for services from whatever source, including commissions, bonuses, and tips and gratuities paid directly to any individual by a customer of his employer, and the cash value of all remuneration in any medium other than cash.

The director may issue regulations for the reasonable determination of the cash value of remuneration in any medium other than cash.

If the employee does not account to his employer for the tips and gratuities received and is engaged in an occupation in which he customarily and regularly receives more than $20 a month in tips, the combined amount received by him from his employer and tips shall be deemed to be at least

equal to the wage required by chapter 387 or a greater sum as determined by regulation of the director.

"Wages" does not include the amount of any payment specified in section 383-11 or 392-22 or chapter 386.

* * *

§ 393-7. Required health care benefits. (a) A prepaid health care plan shall qualify as a plan providing the mandatory health care benefits required under this chapter if it provides for health care benefits equal to, or medically reasonably substitutable for, the benefits provided by prepaid health plans of the same type, as specified in section 393-12(a)(1) or (2), which have the largest numbers of subscribers in the State. This applies to the types and quantity of benefits as well as to limitations on reimbursability, including deductibles, and to required amounts of co-insurance.

The director, after advice by the prepaid health care advisory council, shall determine whether benefits provided in a plan, other than the plan of the respective type having the largest numbers of subscribers in the State, comply with the standards specified in this subsection.

(b) A prepaid group health care plan shall also qualify for the mandatory health care benefits required under this chapter if it is demonstrated by the health care plan contractor offering such coverage to the satisfaction of the director after advice by the prepaid health care advisory council that the plan provides for sound basic hospital, surgical, medical, and other health care benefits at a premium commensurate with the benefits included taking

proper account of the limitations, co-insurance features, and deductibles specified in such plan. Coverage under a plan which provides aggregate benefits that are more limited than those provided by plans qualifying under subsection (a) shall be in compliance with section 393-11 only if the employer contributes at least half of the cost of the coverage of dependents under such plan.

(c) Subject to the provisions of subsections (a) and (b) without limiting the development of medically more desirable combinations and the inclusion of new types of benefits, a prepaid health care plan qualifying under this chapter shall include at least the following benefit types:

(1) Hospital benefits:

(A) In-patient care for a period of at least one hundred twenty days of confinement in each calendar year covering:

(i) Room accommodations;

(ii) Regular and special diets;

(iii) General nursing services;

(iv) Use of operating room, surgical supplies, anesthesia services, and supplies;

(v) Drugs, dressing, oxygen, antibiotics, and blood transfusion services.

(B) Out-patient care:

(i) Covering use of out-patient hospital;

(ii) Facilities for surgical procedures or medical care of an emergency and urgent nature.

(2) Surgical benefits:

(A) Surgical services performed by a licensed physician, as determined by plans meeting the standards of subsections (a) and (b);

(B) After-care visits for a reasonable period;

(C) Anesthesiologist services.

(3) Medical benefits:

(A) Necessary home, office, and hospital visits by a licensed physician;

(B) Intensive medical care while hospitalized;

(C) Medical or surgical consultations while confined.

(4) Diagnostic laboratory services, x-ray films, and radio-therapeutic services, necessary for diagnosis or treatment of injuries or diseases.

(5) Maternity benefits, at least if the employee has been covered by the prepaid health care plan for nine consecutive months prior to the delivery.

(6) Substance abuse benefits:

(A) Alcoholism and drug addiction are illnesses and shall receive benefits as such. In-patient and out-patient benefits for the diagnosis and treatment of substance abuse, including but not limited to alcoholism and drug addiction, shall be specifically stated and shall not be less than the benefits for any other illness, except as provided in this subsection. Medical treatment of substance abuse shall not be limited or reduced by restricting coverage to the mental health or psychiatric benefits of a plan. How-

ever, any psychiatric services received as a result of the treatment of substance abuse may be limited to the psychiatric benefits of the plan.

(B) Out-patient benefits provided by a physician, psychiatrist, or psychologist, without restriction as to place of service; provided that health plans of the type specified in section 393-12(a) shall retain for the contractor the option of:

(i) Providing the benefits in its own facility and utilizing its own staff, or

(ii) Contracting for the provision of these benefits, or

(iii) Authorizing the patient to utilize outside services and defraying or reimbursing the expenses at a rate not to exceed that for provision of services utilizing the health contractor's own facilities and staff.

(C) Detoxification and acute care benefits in hospital or any other public or private treatment facility, or portion thereof, providing services especially for the detoxification of intoxicated persons or drug addicts, which is appropriately licensed, certified, or approved by the department of health in accordance with the standards prescribed by the Joint Commission on Accreditation of Hospitals. Inpatient benefits for detoxification and acute care shall be limited in the case of alcohol to three admissions per calendar year, not to exceed seven days per admission, and shall be limited in the case of other substance abuse to three admissions per calendar year, not to exceed twenty-one days per admission.

(D) Prepaid health plans shall not be required to make reimbursements for care furnished by government agen-

cies and available at no cost to a patient, or for which no charge would have been made if there were no health plan coverage.

(d) The prepaid health care advisory council shall be appointed by the director and shall include representatives of the medical and public health professions, representatives of consumer interests, and persons experienced in prepaid health care protection. The membership of the council shall not exceed seven individuals.

• • •

§ 393-11. Coverage of regular employees by group prepaid health care plan. Every employer who pays to a regular employee monthly wages in an amount of at least 86.67 times the minimum hourly wage, specified in chapter 387, as rounded off by regulation of the director, shall provide coverage of such employee by a prepaid group health care plan qualifying under section 393-7 with a prepaid health care plan contractor in accordance with the provisions of this chapter.

§ 393-12. Choice of plan type and of contractor. (a) Every employer required to provide coverage for his employees by a prepaid group health care plan under this chapter shall elect whether coverage shall be provided by:

(1) A plan which obligates the prepaid health care plan contractor to furnish the required health care benefits; or

(2) A plan which obligates the prepaid health care plan contractor to defray or reimburse the expenses of health care.

His election is binding for one year.

(b) Whether the employer elects a plan type described in subsection (a)(1) or in subsection (a)(2), the employer may elect the particular contractor but the employee shall not be obligated to contribute a greater amount to the premium than he would have to contribute had the employer elected coverage with the contractor providing the prevailing coverage of the respective type in the State.

Subject to the provision of section 393-20, the employer shall provide coverage with the prepaid health care plan contractor selected pursuant to this subsection for all his employees in the State electing this type of coverage who are covered by the provisions of this chapter, except for employees covered by the health care provisions of an applicable collective bargaining agreement as provided in section 393-19(b) first sentence.

§ 393-13. Liability for payment of premium; withholding, recovery of premium. Unless an applicable collective bargaining agreement specifies differently every employer shall contribute at least one-half of the premium for the coverage required by this chapter and the employee shall contribute the balance; provided that in no case shall the employee contribute more than 1.5 per cent of his wages; and provided that if the amount of the employee's contribution is less than one-half of the premium, the employer shall be liable for the whole remaining portion of the premium.

The employer shall withhold the employee's share from his wages with respect to pay periods as specified by the director.

If an employee separates from his employment after his employer has prepaid the employee's share of the cost of providing health care coverage, the employer may deduct an amount not to exceed one-half of the premium cost but without regard to the 1.5 per cent limitation, from the last salary or wages due the employee, or seek other appropriate means to recover the premium.

§ 393-14. Commencement of coverage. The employer shall provide the coverage required by this chapter for any regular employee, who has been in his employ for four consecutive weeks, at the earliest time thereafter at which coverage may be provided with the prepaid health care plan contractor selected pursuant to this chapter.

§ 393-15. Continuation of coverage in case of inability to earn wages. If an employee is hospitalized or otherwise prevented by sickness from working, the employer shall enable the employee to continue his coverage by contributing to the premium the amounts paid by the employer toward such premium prior to the employee's sickness for the period that such employee is hospitalized or prevented by sickness from working. This obligation shall not exceed a period of three months following the month during which the employee became hospitalized or disabled from working, or the period for which the employer has undertaken the payment of his regular wages in such case, whichever is longer.

* * *

§ 393-24. Noncomplying employer held liable for employee's health care costs. Any employer who fails to provide coverage as required by this chapter shall be liable

to pay for the health care costs incurred by an eligible employee during the period in which the employer failed to provide coverage.

• • •

§ 393-41. Establishment of special premium supplementation fund. There is established in the treasury of the State, separate and apart from all public moneys or funds of the State, a special fund for premium supplementation which shall be administered exclusively for the purposes of this chapter. All premium supplementations payable under this part shall be paid from the fund. The fund shall consist of (1) all money appropriated by the State for the purposes of premium supplementation under this part and (2) all fines and penalties collected pursuant to this chapter.

• • •

§ 393-45. Entitlement to premium supplementation. (a) An employer who employs less than eight employees entitled to coverage under this chapter and who provides coverage to such employees pursuant to section 393-7(a) shall be entitled to premium supplementation from the fund if the employer's share of the cost of providing such coverage as determined by sections 393-13 and 393-15 exceeds 1.5 per cent of the total wages payable to such employees and if the amount of such excess is greater than five per cent of the employer's income before taxes directly attributable to the business in which such employees are employed.

(b) The amount of the supplementation shall be that part of the employer's share of the premium cost which exceeds the limits specified in subsection (a).

* * *

§ 393-48. Prepaid health care benefits to be paid from the premium supplementation fund; recovery of benefits. Prepaid health care benefits shall be paid from the premium supplementation fund to an employee who is entitled to receive prepaid health care benefits but cannot receive such benefits because of the bankruptcy of his employer or because his employer is not in compliance with this chapter. Benefits paid from the premium supplementation fund to such employee may be recovered from his bankrupt or noncomplying employer. The director shall institute administrative and legal actions as provided in section 393-33 to effect recovery of such benefits.

2. Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*:

§ 3(1), 29 U.S.C. § 1002(1):

3. Definitions * * * (1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

§ 4(b)(3), 29 U.S.C. 1003(b)(3):

4. Coverage * * * (b) The provisions of this subchapter shall not apply to any employee benefit plan if— * * * (3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws; * * *.

§ 514(a), 29 U.S.C. § 1144(a):

Supersedure; effective date. Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

Appendix H

STATE INSURANCE CODE PROVISIONS WHICH INCLUDE MEDICAL AND HOSPITAL COVERAGE WITHIN THE DEFINITION OF DISABILITY INSURANCE

ALABAMA

"Disability insurance" defined. "Disability insurance" is insurance of human beings against bodily injury, disablement or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness and every insurance appertaining thereto. Disability insurance does not include workmen's compensation coverages. *Ala. Code* § 27-5-4.

ALASKA

Disability insurance defined. Disability insurance is insurance of human beings against bodily injury, disablement or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness or childbirth, or against expense incurred in prevention of sickness, or dental care and every insurance appertaining thereto. Transaction of disability insurance does not include workmen's compensation insurance. *Alaska Stat.* § 21.12.050.

ARIZONA

"Disability insurance" defined. "Disability insurance" is insurance against bodily injury, disablement or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness,

and every insurance appertaining thereto. *Ariz. Rev. Stat.* § 20-253. *See also* § 20-1342:

Scope and format of policy. No policy of disability insurance shall be delivered or issued for delivery to any person in this state unless it . . . complies with the following:

8. Each [disability insurance] contract shall be so written that the corporation shall pay benefits:

(a) For performance of any surgical service which is covered by the terms of such contract, regardless of the place of service;

(b) For any home health service performed by a licensed home health agency which a physician has prescribed in lieu of hospital service, providing the hospital service would have been covered;

(c) For any diagnostic service which a physician has performed outside a hospital in lieu of inpatient service, providing the inpatient service would have been covered; and

(d) For any service performed in a hospital's outpatient department or in a free-standing surgical facility, providing such service would have been covered if performed as an inpatient service.

ARKANSAS

"Disability insurance" defined. Disability insurance is insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto.

Transaction of disability insurance does not include workmen's compensation, as defined in section 76(1)(c) [§ 66-2405(1)(c)]. *Ark. Stat. Ann.* § 66-2403. *See also* § 66-3704 *et seq.* and § 66-4901 *et seq.*, making clear that "every insurance appertaining thereto" includes "hospital service or medical service plans."

FLORIDA

"Disability insurance" defined. "Disability insurance," also known as "health insurance," is insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement, or expense resulting from sickness, and every insurance appertaining thereto. Disability insurance does not include workers' compensation coverages. *Fla. Stat. Ann.* § 624.603 (West Supp. 1981). *See also* § 627.638 (West):

Direct payment for hospital, medical services. Any disability insurance policy insuring against loss or expense due to hospital confinement or to medical and related services may provide for payment of benefits direct to any recognized hospital, doctor, or other person who provided such services, in accordance with the provisions of the policy. . . .

Cf. § 627-642 (West Supp. 1981) (hospital, medical or surgical coverage for newborn children is a form of disability insurance).

HAWAII

Disability insurance defined. Disability insurance, also referred to as accident and sickness insurance, is insurance

against bodily injury, disablement, or death by accident, or accidental means, or the expense thereof; against disablement or expense resulting from sickness; and every insurance appertaining thereto. *Haw. Rev. Stat.* § 431-7. *See also* § 431-513:

Health care groups. A policy of group disability insurance may be issued to a corporation, as policy holder, existing primarily for the purpose of assisting individuals who are its subscribers in securing medical, hospital, dental, and other health care services for themselves and their dependents, covering all and not less than five hundred such subscribers and dependents, with respect only to medical, hospital, dental, and other health care services.

IDAHO

"Disability insurance" defined. "Disability insurance" is insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto. Disability insurance does not include workmen's compensation coverages. *Idaho Code* § 41-503. *See also, e.g.,* § 41-2202(6), 2203(4), 2204, 2210, making clear that general health and medical coverage is within this definition.

MICHIGAN

Disability insurance. Sec. 606. "Disability" insurance is insurance of any person against bodily injury or death by accident, or against disability on account of sickness or accident including also the granting of specific hospital benefits and medical, surgical and sick-care benefits to any

person, family, or group, subject to such limitations as may be prescribed with respect thereto: Provided, The insured under this section may be an employee of any person not subject to the provisions of the workmen's compensation law and in such case the liability may be limited to such as may arise out of and in the course of employee's employment and the premium may be paid by the employer under an agreement with the employee. *Mich. Comp. Laws Ann.* § 500.606 (West).

MONTANA

Disability insurance. Disability insurance is insurance of human beings against bodily injury, disablement, or death by accident or accidental means or the expense thereof or against disablement or expense resulting from sickness and every insurance appertaining thereto. Transaction of disability insurance does not include workers' compensation insurance. *Mont. Code Ann.* § 33-1-207.

TENNESSEE

Definitions of kinds of insurance. * * * (3) DISABILITY INSURANCE. "Disability insurance" is an insurance against bodily injury, disablement or death by accident or accidental means or the expense thereof, against disablement or expense resulting from sickness, and every insurance appertaining thereto; * * *. *Tenn. Code Ann.* § 56-2-201(3).

UTAH

"Disability insurance" defined. Disability insurance is insurance against loss or expense resulting from the sickness of the insured, or from the bodily injury or death of the insured by accident, or both. *Utah Code Ann.* § 31-11-3. *See also* § 31-33-2 *et seq.*, showing that disability insurance

may provide "health insurance benefits . . . for dependents," including newborns, and §§ 31-20-1(b), 31-20-2, 31-20-3, 31-20-11, all of which cover medical and hospital benefits as a form of disability insurance.

WASHINGTON

"Disability insurance" defined. "Disability insurance" is insurance against bodily injury, disablement or death by accident, against disablement resulting from sickness, and every insurance appertaining thereto. *Wash. Rev. Code Ann.* § 48.11.030. *See also* §§ 48.20.410, 20.411, 20.412, 20.414, 20.416, 20.420, 20.430, 21.146, 21.150, 21.155, 21.160, 21.170, 21.180, 48.20.340 *et seq.*, all of which discuss benefits for hospital and medical care as a form of disability insurance. *See especially* §§ 48.21.170, 180, concerning "disability insurance" coverage of "alcoholism treatment benefits."

WISCONSIN

Required provisions for disability insurance policies * * * (3) **Home care.** * * *(b). In this subsection "disability insurance" means surgical, medical, hospital, major medical and other health service coverage but does not include hospital indemnity policies or ancillary coverages such as income continuation, loss of time or accident benefits. *Wis. Stat. Ann.* § 632.78 (West). *See also* §§ 632.89, 632.90, 632.91, all referring to "disability" insurance as covering hospital or medical benefits, including alcoholism and drug abuse coverage and coverage of the newborn.

WYOMING

"Disability insurance" defined. Disability insurance is insurance on human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto. *Wyo. Stat.* § 26-5-103.

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No. 1841

In the Supreme Court of the United States

OCTOBER TERM, 1980

JOSHUA C. AGSALUD, Director of Labor and Industrial Relations of the State of Hawaii; and ORLANDO K. WATANABE, Administrator of the Disability Compensation Division of the Department of Labor and Industrial Relations of the State of Hawaii,
Appellants,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation,
Appellee.

On Appeal from the United States Court of Appeals For the Ninth Circuit

Motion to Dismiss or Affirm

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QUESTIONS PRESENTED FOR REVIEW

1. Is the Hawaii Prepaid Health Care Act—which requires employers in Hawaii to provide employees with coverage of hospital and medical costs related to all nonoccupational illness and injury, whether disabling or not—a "disability insurance law" within the meaning of § 4(b)(3) of ERISA?

2. Is the ruling below that ERISA preempts the Hawaii Prepaid Health Care Act consistent with the ERISA preemption principles expressed by the state and Federal courts, including this Court?*

---

*The parties are set forth in the title. Standard Oil Company of California owns stock in the following publicly owned corporations:

Huntington Beach Co.
AMAX, Inc.
Cetus Corp.

Standard Oil Company of California also owns stock in the following corporations: American Overseas Petroleum Limited; Pars Investment Corporation; Caltex Petroleum Companies; Irving Oil Company, Limited; Irving Oil Limited; Trans Mountain Oil Pipe Line Company; C-W Properties, Inc.; Glenwood Properties; Arabian American Oil Company; Calpam B.V.; Caltex (Kalteks) Petrol Amonim Sirketi; Caltex Mediterranean Limited; Caltex Oil, Sociedad Anonima Espanola; Caltex Deutschland G.m.b.H.; Deutscher Kraftverkehr Ernst Grimmke; Chevron Transport Corporation; N.V. Rotterdam-Rijn Pijpleiding Maatschappij; Societa per Azioni Raffineria Padana Olii Minerali SARPOM; The Associated Octel Company Limited; Societe d'Etude et d'Exploitation de la Raffinerie du Tchad; Chevron Oil Company of Portugal; Rimbey Pipe Line Co., Ltd.; Sultran Ltd.; Chevron Transport Corporation; First Colony Life Insurance Company; Iranian Oil Participants Ltd.; Iranian Oil Services (Holdings) Ltd.; Oil Insurance Limited; P.T. Caltex Pacific Indonesia; Refineria Petrolera de Guatemala-California, Inc.; Aditivos Mexicanos, S.A.; Cansulex Limited; BP-California Limited; Coromandel Fertilisers Limited; Karonite Chemical Company, Limited; Nippon Petroleum Detergent Company, Limited; Orobis Limited; Orogil, S.A.; Petrosynthese, S.A.; Societe Calgil.

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In the Supreme Court of the United States

OCTOBER TERM, 1980

JOSHUA C. AGSALUD, Director of Labor and Industrial Relations of the State of Hawaii; and ORLANDO K. WATANABE, Administrator of the Disability Compensation Division of the Department of Labor and Industrial Relations of the State of Hawaii,
Appellants,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation,
Appellee.

On Appeal from the United States Court of Appeals For the Ninth Circuit

Motion to Dismiss or Affirm

Appellee in the above-entitled case moves to dismiss or affirm on the ground that the questions presented are so unsubstantial as not to need further argument.

STATEMENT OF THE CASE

Appellee Standard Oil Company of California ("Standard"), an employer engaged in interstate commerce, provides its employees with a self-funded health care plan ("medical plan") which reimburses 80 per cent or more of covered medical expenses incurred by participating employees, annuitants, and their dependents (Jur.St.Appx. B,

pp. A-11 to A-12). The medical plan covers more than 25,000 participants throughout the United States, of whom some 337 reside in Hawaii.

Standard's medical plan was designed to comply with, and operate pursuant to, the terms of the Employee Retirement Income Security Act of 1974 ("ERISA"; Jur.St. Appx. G, pp. A-67 to A-68). Standard maintains separate plans and procedures for complying with the Hawaii disability insurance, workers' compensation and unemployment compensation laws.

ERISA regulates private employee benefit and pension plans and establishes standards relating to the administration of those plans (Jur.St.Appx. B, pp. A-10 to A-11). The provisions of ERISA are broadly applicable to employee benefit plans established by employers engaged in interstate commerce (ERISA, § 4(a)). "Employee benefit plan" means an employee welfare plan as defined in § 3(1) of ERISA as:

> "* * * any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment * * *" (Jur.St.Appx. G, p. A-67).

Standard's medical plan is maintained for the purpose of providing medical, surgical, and hospital benefits (Jur.St. Appx. B, p. A-14).

Section 514(a) of ERISA provides:

> "Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III

> of this chapter *shall supersede any and all State laws* insofar as they may now or hereafter relate to any employee benefit plan described in section [4(a)] and not exempt under section [4(b)]" (Jur.St.Appx. G, p. A-68; emphasis added).

In 1974, shortly after ERISA was enacted, Hawaii enacted the Hawaii Prepaid Health Care Act ("Hawaii Act") which requires employers in that state to provide their employees with a comprehensive prepaid health care plan (Jur.St.Appx. A, p. A-11). The Hawaii Act contains reporting requirements which differ from those of ERISA (ibid.). It also requires that plans provide specified benefits not required by ERISA (ibid.). On the other hand, the Hawaii Act, unlike ERISA, contains no provisions which seek to ensure the financial integrity of benefit plans (ERISA, §§ 101-106, 402(a), 402(b), 403, 404-407, 409, 411, 412, 501-502).

The United States Department of Labor, which has the responsibility of administering ERISA, determined that ERISA preempts the Hawaii Act (Jur.St.Appx. B, p. A-31). The Department specifically found:

> "In your letter you noted the exception of section 4(b)(3) for plans 'maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws.' State laws requiring plans for any of the enumerated purposes would not be within the scope of preemption since the exception from coverage discloses an explicit federal policy of leaving those laws intact. However, we believe that the provision of basic health care is fundamentally different and distinguishable from the three listed purposes, each of which provides at least partially for income replacement rather than the prevention and treatment of illness. The three

statutory purposes are to provide income replacement in the event of disability, unemployment or job-related injuries. Basic health care might be made available to disabled, unemployed or injured workers, but the nature of the service provided would still be unrelated to income replacement" (Clerk's Record (9 Cir.) Vol. I, p. 50).

Notwithstanding the Department's opinion, appellants, in their official capacities as administrators of the Hawaii Act, attempted to enforce the Hawaii Act against Standard (Jur.St.Appx. A, p. A-2). Standard filed this suit in the United States District Court for the Northern District of California seeking declaratory and injunctive relief to prevent such enforcement (Jur.St.Appx. B, p. A-12).

The district court ruled that Standard's medical plan is subject to ERISA, that ERISA preempts the Hawaii Act insofar as it applies to Standard's medical plan, and that preemption is constitutional (Jur.St.Appx. B).

An appeal was taken to the Court of Appeals for the Ninth Circuit, which affirmed the district court's decision. The Court of Appeals held that Standard's medical plan is an employee benefit plan within the meaning of ERISA and that the Hawaii Act was preempted by ERISA (Jur.St. Appx. A, pp. A-3 to A-4, A-7 to A-9). The Court of Appeals rejected appellants' argument that Standard's medical plan is maintained solely for the purpose of complying with disability insurance laws and thus exempt from ERISA under § 4(b)(3) (Jur.St.Appx. A, pp. A-4 to A-5). It held that the Hawaii Act is not a "disability insurance law" within the meaning of § 4(b)(3) and, accordingly, that the exemption is not applicable (ibid.). On December 16, 1980, the Court of Appeals denied appellants' petition for a rehearing (Jur.St.Appx. D).

ARGUMENT

There is no need for further consideration by this Court because Congress has already refused to do what appellants are requesting of the Court—effect a reversal of the decision in the case at bar. As part of the Multiemployer Pension Plan Amendments Act of 1980 (94 Stat. 1208), an amendment to ERISA was proposed which would have exempted the Hawaii Act from the preemption provision of § 514 of ERISA (126 Cong.Rec. (July 29, 1980) S 10199). Congress, having knowledge of the decision in this very case (126 Cong.Rec. (July 29, 1980) S 10165-67; 126 Cong. Rec. (Aug. 26, 1980) S 11674-75; 126 Cong.Rec. (Sept. 24, 1980) S 13350-51), refused to enact the proposed amendment; it chose *not* to exempt the Hawaii Act from ERISA preemption.

Congress' 1980 refusal to amend ERISA to accommodate Hawaii was also entirely consistent with the purpose and language of ERISA which the two lower courts and the Department of Labor had found to be clear as applied to the Hawaii Act. When ERISA was first passed in 1974, Congress stated that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" (Jur.St.Appx. G, p. A-68) having the purpose, as pointed out by Senator Williams, Chairman of the Senate Committee on Labor and Public Welfare, "that *with the narrow exceptions specified in the bill,* the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans" (120 Cong.Rec. (Aug. 22, 1974) S 15742; emphasis added).

Appellants' assertion that the Hawaii Act is a "disability insurance law" within the meaning of § 4(b)(3) was properly rejected by the Court of Appeals:

> "Disability insurance compensates people who, because of disability, are unable to perform their normal employment duties. * * * Hawaii's law, on the other hand, is concerned with benefits regardless of any relationship to a disabling condition" (Jur.St.Appx. A, pp. A-4 to A-5).

Appellants' interpretation of "disability insurance law" would allow any state to circumvent Congress' preemptive intent by simply enacting state health insurance laws such as Hawaii's. Such an interpretation is not only contrary to the purpose of ERISA, but was recently rejected in *Alessi v. Raybestos-Manhattan, Inc.* (May 18, 1981) No. 79-1943, 49 U.S.L.W. 4503, where the Court held that "ERISA's authors clearly meant to preclude the states from avoiding through form the substance of the pre-emptive provision" (49 U.S.L.W. 4508). The ruling below is entirely consistent with that principle.

Alessi also negates appellants' only other argument for reversal, that the state and Federal courts need guidance as to ERISA preemption principles generally. In that case, the Court amply explained the ERISA preemption principles. Appellants' argument also ignores the clear language of ERISA: as the courts below pointed out, the ERISA preemption clause "provides that ERISA shall supersede 'any and all State laws' and that does not mean 'some but not all State laws'" (Jur.St.Appx. A, p. A-8; see also Jur.St.Appx. B, p. A-37). As the Court of Appeals noted, the Hawaii Act directly and expressly regulates employee benefit plans such as appellee's (Jur.St.Appx. A, p. A-9). This direct regulation of an area of exclusive Federal concern is necessarily preempted by ERISA.

I. CONGRESS HAS REFUSED TO LEGISLATIVELY OVERTURN THE CASE AT BAR, NEGATING ANY POSSIBLE NEED FOR FURTHER ARGUMENT. IN ANY EVENT, THE HAWAII PREPAID HEALTH CARE ACT—WHICH REQUIRES EMPLOYERS IN HAWAII TO PROVIDE EMPLOYEES WITH COVERAGE OF HOSPITAL AND MEDICAL COSTS RELATED TO ALL NONOCCUPATIONAL ILLNESS AND INJURY, WHETHER DISABLING OR NOT—IS NOT A "DISABILITY INSURANCE LAW" WITHIN THE MEANING OF § 4(b)(3) OF ERISA.

In rejecting appellants' argument that the courts should expand the narrow exemption from ERISA preemption, the district court concluded that Hawaii's "remedy, if a remedy is necessary, is not in this Court but in Congress" (Jur.St. Appx. B, p. A-48). In fact, Hawaii brought the district court's decision to Congress' attention and urged Congress to amend ERISA to exempt the Hawaii Act from preemption (126 Cong.Rec. (July 29, 1980) S 10165-67; 126 Cong.Rec. (Aug. 26, 1980) S 11674-75; 126 Cong.Rec. (Sept. 24, 1980) S 13350-51). Congress, however, declined to do so. Having failed to convince Congress that ERISA should be amended, Hawaii now, in effect, urges this Court to amend ERISA by judicially expanding the narrow exemption from ERISA preemption. Appellants' arguments are contrary not only to the clear terms of ERISA but also to Congress' intent as demonstrated throughout ERISA's legislative history.

Section 4(b)(3) of ERISA provides that ERISA does not apply to any plans

> "• • • maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws" (Jur.St.Appx. G, p. A-68).

The Hawaii Act requires the provision of benefits to employees regardless of their ability to work, and therefore

it is not a disability insurance law. As the Court of Appeals explained,

> "Disability insurance compensates people who, because of disability, are unable to perform their normal employment duties. * * * Hawaii's law, on the other hand, is concerned with benefits regardless of any relationship to a disabling condition" (Jur.St.Appx. A, pp. A-4 to A-5).

The United States Department of Labor, charged with administration of ERISA, has reached the same conclusion —that the Hawaii Act does not fall within the disability insurance law exception of § 4(b)(3) (Jur.St.Appx. B, p. A-31). Appellants themselves admitted in the proceedings below that disability (i.e., inability to work) is an essential element of disability insurance laws:

> "Since the primary purpose of Disability Insurance Law is protection of income, disability was not defined in medical terms but rather on inability to work at regular employment and thereby maintain income during temporary illnesses or injuries" (App.Opn.Br. (9 Cir.), p. 12).

Equally telling is the fact that the author of the Hawaii Act has also determined that it is not a disability insurance law, as that term is used in ERISA:

> "There also seems to be no room for doubt that the Hawaiian law is a health insurance law providing mandatory health care coverage and not a workers' compensation disability insurance or unemployment compensation act as specifically exempted by Sec. 4(b)(3), 29 U.S.C. § 1003(b)(3)" (Clerk's Record (9 Cir.), Vol. II, p. 500).

Moreover, appellants ignore the legislative history of ERISA which demonstrates a clear Congressional intent to define narrowly the exemptions from preemption:

Congressman John Dent, Chairman of the Subcommittee on Labor of the House Labor and Education Committee, stated on the floor of the House of Representatives:

> "Finally I wish to make note of what is to many the crowning achievement of this legislation, the reservation to Federal authority the sole power to regulate the field of employee benefit plans.* * *
>
> "The conferees, *with the narrow exceptions specifically enumerated*, applied this principle in its broadest sense to foreclose any non-Federal regulation of employee benefit plans" (120 Cong.Rec. (Aug. 20, 1974) H 8701; emphasis added).[1]

Senator Jacob Javits expressly stated the necessity for preempting state legislation:

> "Although the desirability of further regulation—at either the State or Federal level—undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required—but for certain exceptions—the displacement of State action in the field of private employee benefit programs. The conferees—recognizing the dimensions of such a policy—also agreed to assign the Congressional Pension Task Force the responsibility of studying and evaluating preemption in connection with State authorities and reporting its findings to the Congress. If it is determined that the preemption policy devised has the effect of precluding essential legislation at either the State or Federal level, appropriate modifications can be made" (120 Cong.Rec. (Aug. 22, 1974) S 15751).

And, as shown above, Congress declined to amend ERISA to exempt the Hawaii Act from preemption. This also

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1. See also the Statement of Senator Harrison Williams, Jr., Chairman of the Senate Committee on Labor and Public Welfare, quoted at page 5.

answers appellants' argument that the Court should expand the § 4(b)(3) exemption to include experimental programs such as Hawaii's (Jur.St., pp. 7, 14).

Appellants erroneously rely on several state regulatory statutes which define "disability insurance" to include all forms of health insurance (Jur.St., pp. 12-13). These statutes are simply irrelevant to the issue at hand—whether or not the Hawaii Act is a "disability insurance law" within the meaning of ERISA. Appellants simply ignore the fact that § 4(b)(3) exempts only plans maintained solely to comply with applicable "disability insurance *laws*." Not one of the statutes cited by appellants is a "disability insurance law." In fact, all state "disability insurance laws," contrary to the Hawaii Act, require that one be disabled in order to be entitled to benefits. Further, the disability insurance laws with which Congress is perhaps most familiar, the disability insurance provisions of the Social Security Act (42 U.S.C. § 401, et seq.), as well as the Federal Railroad Unemployment Insurance Act (45 U.S.C. §§ 351-367), provide disability benefits only to employees unable to work because of illness or injury.

In addition, the legislative history of the Welfare and Pension Plans Disclosure Act of 1958 (72 Stat. 997; repealed by § 111(a)(1) of ERISA, 29 U.S.C. § 1031(a)(1)) provides guidance to Congress' intent in ERISA. In recommending a bill which eventually became the forerunner of ERISA, the Senate Committee on Labor and Public Welfare stated that "temporary disability insurance laws of a few of the States * * * are designed to replace, in part, the loss of the wages of the family breadwinner *during periods of temporary disability*" (S.Rept. 1440, 85th Cong., 2d Sess., p. 6, 1958 U.S. Cong. & Admin. News, p. 4142; emphasis added).

The narrow exemption of § 4(b)(3) was intended to be limited to disability insurance laws *as they then existed in*

several states—laws which provided benefits only to those who were disabled.[2] Any broader exemption would raise the possibility of "opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension benefit plans not clearly connected to the Federal regulatory scheme" (120 Cong.Rec. (Aug. 22, 1974) S 15751).

Even assuming that the Hawaii Act is a disability insurance law, the exemption of § 4(b)(3) is inapplicable because Standard's medical plan is not maintained *solely* for the purpose of complying with the Hawaii Act. In *Alessi v. Raybestos-Manhattan, Inc.* (May 18, 1981) No. 79-1943, 49 U.S.L.W. 4503, this Court noted that the ERISA §4(b)(3) exemption does not apply to plans that broadly serve employee needs beyond compliance with state laws (49 U.S.L.W. 4508, n. 20). In the case at bar, the district court observed that "the Hawaii Act regulates a type of employee benefit plan generally and historically maintained for other reasons [besides compliance with state laws]" (Jur.St. Appx. B, p. A-31). Thus, not only does the Hawaii Act fail to fall within the definition of "disability insurance plan," but also it does not regulate plans "maintained solely" for the purpose of complying with state laws, as required by §4(b)(3).

II. THE RULING BELOW THAT ERISA PREEMPTS THE HAWAII ACT IS CONSISTENT WITH THE ERISA PREEMPTION PRINCIPLES EXPRESSED BY THE STATE AND FEDERAL COURTS, INCLUDING THIS COURT.

As shown above, the Court's decision in *Alessi* (49 U.S.L.W. 4503) and the terms and legislative history of

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2. See, e.g., Haw.Rev.Stat. § 392-3(5) (Hawaii Temporary Disability Insurance Law); Cal.Unemp.Ins.Code § 2626 (West); N.Y. Work.Comp. § 201(9) (McKinney); N.J.Stat.Ann. § 43:21-29 (West) (Temporary Disability Benefits Law); R.I.Gen.Laws § 28-39-2(14) (R.I.Temporary Disability Insurance Act); 11 P.R.Laws Ann. § 202(g) (Disability Benefits Act).

ERISA completely refute appellants' argument that the state and Federal courts need guidance from this Court as to ERISA preemption principles generally (Jur.St., pp. 14-20). This Court's *Alessi* opinion should dispel any doubt as to the question posed by appellants—"whether § 514(a) must be read at its broadest and any exceptions at their narrowest" (Jur.St., p. 16). The broad language of § 514(a) demonstrates that Congress intended to depart from any previous legislation that envisioned the exercise of state regulation over employee benefit and pension plans (*Alessi v. Raybestos-Manhattan, Inc.* (May 18, 1981) No. 79-1943, 49 U.S.L.W. 4503, 4507-08).

Appellants also contend that the ruling below is inconsistent with the ERISA principles expressed by the state and Federal courts in cases involving the application of community property, alimony, and child support laws to employee benefit plans. In particular, appellants assert that the ruling below is inconsistent with decisions such as *Stone v. Stone* (N.D.Cal. 1978) 450 F.Supp. 919, affirmed (9 Cir. 1980) 632 F.2d 740, which have held that Congress did not intend ERISA to preempt state domestic relations law. In arguing that the Hawaii Act should be subject to a similar exemption, appellants fail to come to grips with the distinction between a state's domestic relations laws and state health insurance law. As the Court of Appeals pointed out, Hawaii's Act "directly and expressly regulates employers and the type of benefits they provide employees" (Jur.St. Appx., p. A-9).

The ruling below is consistent with both ERISA preemption principles and Congress' goal in ERISA. To find that the Hawaii Act is included within the meaning of disability insurance law, or is otherwise exempt from ERISA, would lead to the emasculation of ERISA. The goal of Congress

was to preempt the field, with only narrow exemptions, in order to prevent inconsistent and conflicting regulation of such plans under state law (see supra, pp. 5, 9). Without this broad preemption, all states, by simply enacting laws such as Hawaii's, would be free to regulate the benefits and administration of employee benefit plans. Under appellants' theory, all employee benefit plans regulated by such state laws would then be exempt from ERISA as plans "maintained solely for the purpose of complying with applicable * * * disability insurance laws" (ERISA §4(b)(3); Jur.St. Appx. G, p. A-68). The practical result would be that state health insurance laws such as Hawaii's would preempt ERISA—the antithesis of Congress' goal.

CONCLUSION

For the foregoing reasons, the questions presented are so unsubstantial as not to need further argument and the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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No. 80-1841

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

JOSHUA C. AGSALUD, Director of Labor and Industrial Relations of the State of Hawaii; and ORLANDO K. WATANABE, Administrator of the Disability Compensation Division of the Department of Labor and Industrial Relations of the State of Hawaii,
Appellants,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, a Delaware corporation,
Appellee.

On Appeal from the United States Court of Appeals For the Ninth Circuit

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

1. The principal thrust of the Motion to Dismiss or Affirm ("Motion") is that the two issues raised in our Jurisdictional Statement have already been definitively settled: Congress, it is said, conclusively determined that the Hawaii Prepaid Health Care Act ("Hawaii Act" or "Act") is not a disability insurance law within the meaning of § 4(b)(3) of ERISA, 29 U.S.C. § 1003(b), when it failed in 1980 to create an express exception for the Hawaii Act. Motion at 5, 7. And, appellee claims, this Court in *Alessi v. Raybestos-Manhattan, Inc.*, 49 U.S.L.W. 4503 (May 19, 1981), settled any conceptual conflict among lower courts as to ERISA preemption issues generally. Motion at 6, 11-13. To the contrary, both Congress in the relevant legislative materials and this Court in *Alessi* expressly and pointedly declined to settle the issues which justify plenary consideration of this case.

A. *Congressional Action.* Appellee has conveniently left out of its truncated version of the legislative events several critical facts:

First, and most important, Congress made as clear as it possibly could that the failure to enact an express exception for the Act was not to be given any substantive significance. The conference report specifically stated:

> In adopting the House position, the Conferees do not imply a position as to the effect of section 514 of ERISA on the Hawaii Prepaid Health Care Law or other similar State laws, or as to correctness of any court decisions in this area.
>
> H.R. Conf. Rep. No. 96-1343, 96th Cong., 2d Sess., at 4.

Thus, Congress itself repudiated the view of its actions appellee is now pressing upon this Court.

Second, the actual sequence of events confirms that, as the Conference report indicates, the 1980 amendment did not fail on its merits. Rather, its failure stemmed from the attempt to enact it as part of the multiemployer bill, despite the fact that the leadership of the House of Representatives had determined to oppose for tactical purposes non-germane amendments to that bill.[1]

Third, it was repeatedly asserted by legislators sponsoring an express exception to ERISA preemption for the Hawaii Act that Congress never intended preemption of such legislation in the first place, and that an amendment was needed only because the district court misunderstood Congress' intent. Senator Matsunaga, for example, stressed

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[1]As Senator Matsunaga, the author of the proposed amendment, later explained:

> [T]o secure passage of the Multiemployer Pension Plan Amendments Act of 1980[,] I agreed to the deletion of my amendment in the House-Senate conference on the bill. The distinguished chairman of the House Task Force on Welfare and Pension Plans, acting for the House Labor committee chairman, said that he had no problems with the substance of my amendment, but opposed it as a rider on the multiemployer bill, H.R. 3904 . . . .
>
> 126 Cong. Rec. (Sept. 24, 1980) S1335.

See 126 Cong. Rec. (Aug. 26, 1980) S11675 (remarks of Sen. Matsunaga); *id.* (remarks of Sen. Dole); 126 Cong. Rec. (Aug. 26, 1980) H7863 (remarks of Rep. Long); 126 Cong. Rec. (Aug. 26, 1980) H7864 (remarks of Rep. Thompson); 126 Cong. Rec. (Aug. 28, 1980) H8066 (remarks of Rep. Thompson); 126 Cong. Rec. (Sept. 18, 1980) S12900 (remarks of Sen. Williams); 126 Cong. Rec. (Sept. 19, 1980) H9178 (remarks of Rep. Thompson).

that "congress clearly never intended to preempt [the Hawaii Act]" (126 Cong. Rec. (Aug. 26, 1980) S11674):

> During the 95th Congress, Senator Inouye and I introduced legislation which would *clarify this intent of Congress* with respect to the preemption of the Hawaii Prepaid Health Care Act. Over the past 3 years, the hearing records of both the Committee on Labor and Human Resources and the Committee on Finance have explicitly and conclusively indicated that *the preemption of the Hawaii health insurance law was never envisioned or intended by Congress.* In fact, both committees have acknowledged the need to correct this serious ambiguity in ERISA preemption authority through the approval of the Matsunga amendment to S. 1976, the Senate companion bill to H.R. 3904.
>
> *Id.* (emphasis supplied).

Nowhere in the legislative history does any senator or member of Congress dispute Senator Matsunga's characterization of Congress' 1974 intent, or suggest that the preemption of statutes such as the Hawaii Act was envisioned by Congress.

Given these circumstances, this Court's observation in *United States v. Price,* 361 U.S. 304, 310-11, that "nonaction by Congress affords the most dubious foundation for drawing positive inferences" applies with particular force. In *Price,* as here, it was argued that the failure of Congress to enact "an express repudiation of [certain court] decisions" should lead the Court to "infer an acceptance of the Ninth Circuit's position." *Id.* at 310. The Court declined the invitation, noting that the legislative materials might as well be said to support the opposite inference—"that the [petitioner's] interpretation of the statute was correct,

and that clarification was called for only because of the doubts caused by the Ninth Circuit's decisions." *Id.* at 312. Therefore, said the Court,

> Whether Congress thought the proposal unwise, as respondent argues, or unnecessary, we cannot tell; accordingly, no inference can properly be drawn from the failure of Congress to act.
>
> *Id.*

Here, as noted, Congress *itself* expressly repudiated any substantive significance of its failure to reverse the district court's statutory interpretation. To ignore the legislature's admonition in this regard in the name of recognizing its intent would be entirely perverse. And, here, unlike the situation in *Price,* neither the court of appeals nor this Court had yet acted upon the issue in question when Congress declined to create a specific exception for the Hawaii Act. Thus, an unwillingness to preempt the appropriate role of appellate courts is yet another possible explanation of Congress' 1980 actions. For both these reasons, it is even clearer in this case than it was in *Price* that "no inference can properly be drawn from the failure of Congress to act." *Id.* at 512.

B. *The Alessi Opinion.* Far from providing, as appellee claims, the guidance as to ERISA preemption principles generally which, as our Jurisdictional Statement ("Juris. St.") points out (at pp. 14-20), is sorely needed, *Alessi* left that task to another day. For, this Court in *Alessi* declined to determine whether, as the court of appeals had held, the "relate to pension plans" language in § 514(a) of ERISA must be "read . . . in 'its normal dictionary sense' as indicating a broad pre-emptive in-

tent" (49 U.S.L.W. at 4508), instead reaching the same result as had the court of appeals "by a different route." *Id.* Specifically, this Court based its preemption holding in *Alessi* upon the classic preemption ground that "because it eliminates one method for calculating benefits—integration—that is permitted by federal law," the New Jersey law in question governed a matter directly addressed by ERISA and did so in a manner in conflict with the federal rule. *Id.* Since this narrow ground for decision was available, the Court expressly refused to "determine the outer bounds of ERISA's pre-emptive language. . . ." *Id.* In particular, while noting that "[o]ther courts have reached varying conclusions as to the meaning of ERISA's pre-emptive language in other contexts," citing, *inter alia*, two of the cases we relied on in our Jurisdictional Statement as conceptually in conflict with this one,[2] the Court took care to "express no views on the merits of any of those decisions." *Id.*, n.21.

Thus, *Alessi* did not determine the application of ERISA preemption to state laws, such as the Hawaii Act,

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[2] *American Telephone & Telegraph Co. v. Merry*, 592 F.2d 118 (CA 2 1979); *Stone v. Stone*, 450 F.Supp. 919 (N.D. Cal. 1978), *affirmed* 632 F.2d 740 (CA 9 1980), *certiorari denied* 49 U.S.L.W. 3979 (July 3, 1981). Appellee suggests that the implied exception to § 514(a) created in *Stone*, *Merry*, and the other marital property and support cases can be reconciled with the parsimonious reading given an express exception in this case because domestic relations laws affect employee benefit plans indirectly rather than directly. Motion at 12. *Alessi*, however, held that "[i]t is of no moment that New Jersey intrudes indirectly . . . rather than directly . . . on private pensions" (49 U.S.L.W. at 4508), noting that § 514 of ERISA in terms applies to "a state . . . which purports to regulate, *directly or indirectly* . . ." (emphasis added).

concerning matters ERISA does not address. If anything, by stressing that "'preemption of state law by federal statute or regulation is not favored'" (49 U.S.L.W. at 4507), citing a long list of traditional preemption cases, *Alessi* suggested that the creation of a "no-man's land," in which the states could not act even though the federal government has not done so, is not to be lightly inferred, at least where an express statutory exception may well apply.

2. To the extent it addresses at all the merits of the § 4(b)(3) "disability insurance" exception, appellee embraces with a vengeance the circular approach of the courts below (see Juris. St. at 13), insisting that one can ascertain the meaning of the term "disability insurance law" in § 4(b)(3) only by analyzing the content of *compulsory* disability insurance laws in effect in 1974. Motion at 10. This methodology simply assumes the answer to the basic issue raised in this appeal—whether Congress intended to forbid states in the future from mandating for employees forms of disability insurance different from those previously required by state or federal law. Surely, there is nothing inherent in the term "disability insurance laws" which would necessitate appellee's myopic approach to statutory interpretation. Rather, one would expect that, absent any reason to believe otherwise, a "disability insurance law" is simply a law concerning "disability insurance." The determinative question therefore becomes whether or not the insurance required by the Hawaii Act is "disability insurance;" if so the Hawaii Act is a "disability insurance law" within the meaning of § 4(b)(3).[3] As to this question,

[3]This is not to say that the state regulatory statutes compiled in Appendix H, pp. A-69 *et seq.*, of the Jurisdictional Statement, are,

it is far from "irrelevant" (Motion at 10) that the term "disability insurance" is used in many states to embrace precisely the type of insurance the Hawaii Act seeks to require.[4]

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to the extent they affect employee benefit plans, themselves exempt from ERISA preemption under §§ 4(b)(3) and 514(a). Such statutes *are*, contrary to appellee's extraordinary statement to the contrary, "disability insurance laws," since they are laws which concern disability insurance. However, these statutes regulate existing plans rather than mandating coverage. Therefore, no plan is "maintained solely for the purpose of complying with" such laws, and neither § 4(b)(3) nor the exception to § 514(a) incorporating § 4(b)(3) is applicable.

[4]That the United States Department of Labor was also in error as to the meaning of the term "disability insurance" (Motion at 8) does not give appellee's *ipse dixit* approach to statutory interpretation any more stature. The Department of Labor's construction was in the form of an individual opinion letter rather than a regulation or adjudication, and it concerned a part of the statute, federal pre-emption, not within the scope of the agency's role in enforcing the federal substantive requirements. More important, the construction adopted by the agency—that the Hawaii Act is not a "disability insurance" law because it does not provide "at least partially for income replacement rather than the prevention and treatment of illness" (see Motion at 4)—was *not* embraced by the court of appeals and is *not* the definition now advocated by appellee. For, both the court below and appellee have apparently recognized as entirely untenable an analysis, such as that of the Department of Labor, which turns upon whether a state's program protecting against economic injury due to nonoccupational illness or injury is enacted as two successive pieces of legislation or one integrated act. *See* Juris. St. at 11 n.8.

Of even less consequence are the views, given without any explanation, of "the author of the Hawaii Act" (Motion at 8), a professor who was indeed the draftsperson but who was neither a member of Congress, a member of the Hawaii legislature, nor for any other reason particularly knowledgeable concerning the meaning of § 4(b)(3) of ERISA.

Nor is appellee's attempt to find support in legislative history for its question-begging analysis at all successful. Both passages appellee quotes concerning the meaning of § 514(a) (Motion at 9) note expressly that the national uniformity otherwise mandated is subject to the statutory exceptions. That the exceptions were described as "narrow" (120 Cong. Rec. (Aug. 20, 1974) H. 8701 (remarks of Rep. Dent)) adds no justification for ascribing to Congress the odd intention to permit retrospective but not preventive compulsory disability insurance. With or without the Hawaii variety of disability insurance, the § 4(b)(3) disability insurance exception would be "narrow". The numerous state statutes simply regulating voluntary employee benefit plans, as well as any state schemes to mandate other benefit plans (for example, pensions, life insurance, or prepaid legal services), would remain outside its scope.[5]

Appellee claims, however, that if the Hawaii Act is recognized as mandating a form of disability insurance, "any state [could] circumvent Congress' preemptive intent by simply enacting state health insurance laws such as Hawaii's." Motion at 6; see also *id.* at 11, 13. The suggestion apparently is that the difference between state regulation of voluntary health plans and a state requirement for mandatory health plans is a matter of form rather than substance (*id.* at 6). This suggestion would certainly surprise

[5]The Welfare and Pension Plans Disclosure Act ("WPPDA") material (Motion at 10) from 1958 is also uninformative as to the intent of Congress sixteen years later. ERISA *changed* the language of the WPPDA provision otherwise parallel to § 4(b)(3). *See* Juris. St. at 9 n.5. Thus, even if the purely descriptive material appellee relies on could be read as an indication of the intent of the 1958 Congress, it surely is not helpful in understanding different terminology by a different Congress.

both the thousands of employees in Hawaii who were covered by medical benefit insurance for the first time after the 1974 Act was passed, and their employers, who incurred the cost of such coverage. It would also surprise Congress. By including the disability insurance exception in § 4(b)(3) at all, Congress delineated an area within which state activity was to be permitted; that area was defined according to whether the state law in question mandated or simply regulated disability insurance.[6] Thus, Congress evidently perceived a difference of substance, not of form, between the two types of state legislation, for it determined to sanction one and not the other.

Further, if states were as anxious to evade ERISA preemption by subterfuge as appellee supposes, one would

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[6]Appellee argues that § 4(b)(3) would be inapplicable in any event to its medical plan "because Standard's medical plan is not maintained *solely* for the purpose of complying with the Hawaii Act." Motion at 11. If Appellee is suggesting a company-by-company factual inquiry into whether a particular plan would have been different but for a state mandatory coverage law, it is reviving an argument *rejected* by the district court (Juris. St. A-30), and not raised at all in the court of appeals. Further, *Alessi, supra*, did not embrace such an awkward construction of the "maintained solely" language; rather, it simply observed that a pension plan, established to provide benefits of a type not required by any state statute, cannot in any meaningful sense be said to be "maintained solely" to comply with a workers' compensation law. 49 U.S.L.W. at 4508 n.20.

If, as appears more probable, appellee's "maintained solely" argument is meant to apply to the Hawaii Act on its face, that argument would read the "disability insurance law" exception in § 4(b)(3) out of the statute entirely: Employer-provided disability insurance of *all* kinds is "generally and historically maintained for other reasons [besides compliance with state laws]" (Motion at 11), since only five states mandate such coverage. See Juris. St. at 13 n.10.

have expected since ERISA a rush to pass statutes requiring those forms of disability insurance which appellee concedes *are* within § 4(b)(3), in order to "circumvent" ERISA preemption of state disability insurance regulation. There has been no stampede in that direction. Rather, some indication of how "simple" it is to pass statutes requiring thousands of employers to provide benefits to their employees is that, other than in Hawaii, *no* new state statute requiring employers to establish *any* variety of disability insurance has been added to the five in existence when ERISA went into effect, even though § 4(b)(3) would clearly permit such activity.

In sum, appellee has still not identified any historical or policy reason for attributing to Congress an intent to forbid states from assuring their citizens economic security by providing for adequate medical care. And, as a matter of "plain words," § 4(b)(3) clearly encompasses the Hawaii Act. Since there is consequently no basis for displacing Hawaii's right to protect its citizens as it sees fit, this case merits the Court's plenary attention.

CONCLUSION

For the reasons stated above, the motion to dismiss or affirm should be denied, and probable jurisdiction should be noted in this case.

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